

Reproduction of the Grand Prize Diploma for the first translation (into a modern language) of the Babylonian Talmud. The name of the translator leads those in Group III., Class 13, of the American Collective Exhibit. Presented by the International Jury of Awards, August 18, 1900.

Herrn M. L. Rodkinson, New York

Meran (Austria) 13/6 02

Lieber Herr Rodkinson!

Sie haben die Güte gehabt, mir, in Gemeinschaft mit dem Herrn Grand Rabbin de France Zadoc Kahn, den VI (XIV) Band Ihrer englischen Uebersetzung des Talmud zu widmen, und haben mir damit eine hohe Ehre erwiesen. Ich bitte Sie, den Ausdruck meines herzlichsten Dankes dafür entgegen zu nehmen.

Es wäre eine betrügerische Schmeichelei, wenn ich Ihr Werk als ein vollkommenes bezeichnen wollte, bin ich doch, was der englischen Sprache gegenüber nur ein Laie, und niemals im Stande dasselbe vollkommen zu beurtheilen. Das aber weiß ich, daß es nur einem so unsäglichen Fleiße, einer so unermüdlichen Energie, und nur einem so kundigen Steuermann, der das ganze "Meer des Talmuds" beherrscht, möglich war ein solches Riesenwerk zu Stande zu

bringen

bringen.

Die Amerikanischen Juden, die sich mit rühmenswerthem Eifer der Pflege und Förderung der Wissenschaft des Judenthums hin zuwenden, werden stolz darauf sein, daß auch diese so oft seit Menschenaltern begehrte & niemals gelungene Schöpfung einer Uebertragung des ganzen Talmuds in ein modernes Idiom auf amerikanischem Boden entstanden ist.

Daß Sie meinen Namen mit dem Werke verknüpft haben, verpflichtet mich zum innigsten Danke, mit welchem ich, unter herzlichen Wünschen für Ihr ferneres Gelingen und besten Erfolg, verbleibe

Ihr Lazarus

Translation of the original letter of the *Privy Councillor* to H. I. M. the German Emperor, Prof. Lazarus, Ph.D., D.D.

"You have been kind enough to dedicate your English translation of Volume VI. (14) of the Babylonian Talmud to me, in conjunction with Monsieur the Grand Rabbin of France, Zadoc Kahn. You have conferred upon me a high honor and I beg of you to accept therefor my heartiest thanks. It would be a deceiving flattery were I to say your work is perfect, for I am but a layman so far as the English language is concerned, hence on that point am not in a position to judge. I know, however, that only by means of a diligence which cannot be estimated and through untiring energy—and that possessed by a skillful pilot who has mastered the 'whole sea of the Talmud'—can such a gigantic work be accomplished.

"The American Jews, who turn to the promotion of the science of Judaism with such praiseworthy zeal, will be proud of the fact that this ever-desired and never-accomplished task, the translation of the whole Talmud into a modern idiom, was consummated on American soil.

"That you have connected my name with your work obliges me to express my sincerest thanks, with the expression of which I remain, with many hearty wishes for your future welfare and success, your

"Lazarus."

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NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and Translated into English

BY

MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACTS MACCOTH, SHEBUOTH AND EDUYOTH

Volume IX. (XVII.)

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

TO HIM

WHO IS HIGHLY RESPECTED BY THE PEOPLE FOR HIS GENIUS AND GENEROSITY THE

HONORABLE JACOB A. CANTOR

PRESIDENT OF THE BOARD OF ALDERMAN, BOROUGH OF MANHATTAN, NEW YORK

THIS VOLUME IS RESPECTFULLY DEDICATED BY THE EDITOR AND TRANSLATOR

MICHAEL L. RODKINSON

New York
Rosh Chodesh Sivan, 5663
(May 27, 1903)

CONCLUDING WORDS

TO THE COMPLETION OF SECTIONS FESTIVAL AND JURISPRUDENCE.

With the benediction to the Almighty, who prolonged our life to see the completion of our translation the above two large sections of the Talmud, we deem it necessary to say a few words concerning the criticisms which have recently appeared, and to which we are grateful for having called our attention to some important matters. However, before we will come to the point we beg to say that we were anxious during the whole time to see a true criticism to our entire work, pointing out the mistakes or errors which must be found in the editing as well as in the translating itself of such a difficult and voluminous work. But to our knowledge such has not appeared anywhere as yet, although reviews and notices of different kinds were given in more than a hundred leading papers in both the old and the new world. The praises encouraged us but little, and some of the criticisms did not discourage us at all, for the reason that both were only phrases, without giving any evidence or important facts to which our proper attention should be called. And we would still be grateful indeed to those who would give such criticisms in compliance with our wishes, as this would be a great help to us in the continuation of the translation of the four remaining sections, which may take about twelve volumes or so more. Now to the point. There was a criticism in the "Open Court" of Chicago, Vol. XVI., pp. 425–427, accusing us that we have omitted the discussion of some sages concerning "evangelium." How it should be written עון־גליון or און־גליון.*

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*The meaning of the first two words is one and the same. And the *aelph* here is the same as the *ayen*. The same differ also about the same letters concerning the word "Eidehen," Abuda Zara, p. I. (see foot-note there); hence, as it is without any importance for the English reader, we have to omit it, according to our method. But that what was said in the name of Jesus by Jacob (James) we have translated, although we do not believe that this was so (see foot-note, ibid. p. 27).

and for such an omission he exclaimed that we have no translation of the whole Talmud.* We have received also some private letters from educated people, asking why they do not find any mention of Jesus of Nazareth. And in answer to the criticism as well as to the many letters we have received, we beg to give some letters of an editor of a scientific paper of this country, which we think will throw some light on this matter.

June 1, 1901.

Rev. Michael Rodkinson,
New York City.

Dear Sir:—The receipt of Volume XII. of the Talmud brings back recollections of a pleasant hour spent with you in my office, and the information which you so kindly gave me on several very obscure points. Perhaps you will pardon a personal letter of inquiry on a point or two in "Sabbath" that have especially interested me.

You will remember where the subject is discussed as to whether it was lawful to rescue books from the flames, the point turning especially, as I read it, that on the one hand the books of unbelievers should be allowed to perish, while on the other hand, these same books also contain the Sacred Name.

R. Abuha is asked if the books of the Be Abhidon should be saved, and gives an equivocal reply. It is stated that Rabh went to neither the Be Abhidon nor the Be Nitzrephe. Samuel went to the Abhidon, and Mar Bar Joseph "was of their society."

Your note on the passage leaves it conjectural who the people were. To me it seems altogether likely that they were Christian sects (possibly Jewish Christians and Gentile Christians). I should infer this because, first, R. Tarphon's statement immediately precedes it, and Christian tradition at least connects him with disputes with Christians. Second, the story of Ema Shalom and her brother Gamaliel II., and the philosopher and judge follows it. It seems to me that there are at least three implied quotations in this story from Matthew's Gospel or some other Christian document: "Let your light shine," "I came not to destroy but fulfill the law," and the statement about son and daughter inheriting alike.

Do Hebrew scholars think that Christians are indicated by Be Abhidon and Be Nitzrephe? And if so, how is the fact explained that Samuel went to one of them, unless it be that Samuel is Saul (Paul), and how could Mar Bar Joseph be of their society?

It seems to me that I find a number of places where Christian usages or

* Some one has called our attention to this article being in the public library about a year ago and we only glanced at it for lack of time. And for the same reason we could not have the original before us when we are writing our answer. By the way, we like to say that there is published a booklet, "Chasronoth-Hashas," containing the omission made by the censor about Jesus and his disciples, to which we do not pay any attention, as its contents are nonsense and we are sure that these were not said or written by the talmudic scholars. We also possess a letter from the late lamented Dr. Mielziner, who agrees with us on this point.

doctrines are referred to, and I wish I were informed as to the names and other indications which would show this. If you could give me some light, without trespassing too much on your time, I would be very grateful indeed.

June 12, 1901.

My Dear Sir: Your kind favor of the 9th at hand and carefully noted. I assume that you have good and sufficient reasons for your hesitation in such a matter, although they may not be apparent to me. Therefore it only remains for me to assure you as strongly as I know how, that the information I seek is only for myself, that it will not be published, that it will not be quoted even in conversation as your opinion.

I simply wish to read understandingly the fine work you are placing before English readers; I want to get into the atmosphere of the times as much as possible. Judaism and Christianity must have touched elbows a good deal in the first three centuries, and there must be some evidences of it in the Talmud to those who can read between the lines. I think I can see references. For instance, were there Saducees after the final overthrow, and is not the term, at least occasionally, applied to Christians?

My own conviction, which of course, is based on very superficial knowledge mostly gleaned form the early Christian Fathers, is that at first, the line of demarcation between the Jewish Christians and the Jews was not so strong as it became afterwards. But at any rate, there must be more references to them than appear on the surface, it seems to me, and that is what I want to know. But I have no theory to vindicate and seek the knowledge only for myself.

July 2, 1901.

My Dear Sir: I wish to acknowledge the receipt of your very kind and instructive letter of two weeks ago. It covers substantially the points I wished to know, and saved me much research that night in the end prove barren of results. I shall remember your kindness. Again thanking you, I am,

And to these letters we may add a paragraph of Tract Sabbath, p. 119. "R. Aqiba said: 'The wood-gatherer was Zelophchad.' To which R. Jehudah b. Bathyra exclaimed: 'Aqiba! Whether your statement be true or false, you will have to answer for it at the time of the divine judgment; for if it be true, you disclosed the name of the man whom the Scriptures direct to shield, and thus you brought him unto infamy, and if it be false, you slandered a man who was upright,'" etc. (See there.) And this rule we adopted while engaged in this translation—namely, not to give hypotheses to the reader, as there is not one line in the whole Mishna which speaks clearly of Jesus and his beliefs. In our book on "Phylacteries" we have alluded to the reason why the editor of the Mishna did so. And the same reason prevented us from *interpreting* passages or paragraphs which seemed to us to treat about Jesus and his

followers, as after all these are only hypotheses, and we do not like to throw our suppositions in a translation which ought to be more or less authentic. This is all that we can say in answer to the " Open Court."

There has appeared in the " Baltimore Sun," April 17, 1903, a notice which, in the main, is very flattering, but gives also some criticisms that are of interest, and correct from the standpoint of the writer, They concern the remarks sub 3 and 4 of the " Explanatory Remarks " published in each volume on the other side of the title-page. Concerning the fourth he says: " There are many who would be glad to verify references who may not have a copy of the new Hebrew text, or unable to use it, if they had it." Concerning the third remark he says: " This seems unfortunate. The alternative interpretation is often of very considerable value, and may be used for historical purposes even if not so important theologically." To this we may say that we were very careful when omitting the first version, and where we found it important we translated both, as the reader will find in our Talmud in many places, " If you wish, it may be said so, and if you wish, it may be said so and so." And we did not fail even to translate a third " if you wish " when we saw that they all were of importance. In general, however, only the last versions are of great account, and the decisions of the post-talmudical rabbis were only in accordance with those. And only they are the guides of the Schul'han Arush (Jewish Code).

Concerning the fourth we may confess that the critic is perfectly right in his contention. However, it is not our fault but that of the circumstances which deceived us in the beginning of our undertaking. We previously thought that we would find subscribers for the Hebrew text also, and so give the Hebrew with the English together, and then there would have certainly been no need of separately marking the pages of the text. Unfortunately, there was no demand for the text at all, so that we were unable to furnish it with the translation, and in reality, for the general English reader who is not able to read Hebrew the page of the text is immaterial. And for the Hebrew students, who are very few, we could not afford to go to such expense, as a separate column for each page would be necessary for this purpose, for such could not be inserted in the text even in parentheses.

Concerning the last Tract Horioth, which speaks of sacrifices

and offerings only, we are at a loss to understand why it was inserted in the section Jurisprudence, unless the reason be the treatment of whether the expenses of the offerings must be carried by the judges of the court themselves or by the treasury of the congregation, which may belong to the category of damages. However, the whole tract treats almost of one and the same point, so that we could not give the contents of each chapter separately, and confined ourselves by giving the synopsis of the beginning of each Mishna and some important matters from the Gemara of the last.

M. L. R.

New York, *May* 25, 1903.

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SYNOPSIS OF SUBJECTS

OF

TRACT MACCOTH (STRIPES).

CHAPTER I.

MISHNA *I.* TO *X.* How should witnesses be made collusive? There are another sort of witnesses who are not subject to the punishment of collusiveness but who are to suffer stripes instead. Where do we find a hint in the Scripture that collusive witnesses shall be punished with stripes? There are four points concerning collusive witnesses, etc. And they are not sold as Hebrew slaves. As it reads: "He shall be sold for his theft, but not for his collusiveness." A collusive witness pays his share. What does this mean? We testify that so and so has divorced his wife and has not paid the amount mentioned in her marriage contract, etc. We testify that so and so owes to his neighbor a thousand zuz, etc. If one says I will make you a loan with the stipulation that the Sabbathic year shall not release me, it nevertheless releases. If one loans money to his neighbor without a fixed term of return, he has no right to demand it before the elapse of thirty days. We testify that so and so owes 200 zuz to his neighbor, and they were found collusive, etc. To a negative commandment that does not contain manual labor, stripes does not apply. The fine of money may be divided into two or three shares; however, this is not to be done with stripes. Witnesses cannot be made collusive unless the falsehood lies in their bodies. A woman once brought witnesses, and they were found false. She then brought another party, who were also found false; she then brought another party, etc. Because she is suspicious should all Israel be suspected of testifying falsely? Collusive witnesses are not to be killed unless the sentence of capital punishment for the defendant is rendered. There is no punishment on the ground of *a fortiori* conclusions. May I not live to see the consolation of our nation, if I have not killed a collusive witness for the purpose of removing from the mind of the saducier, etc. The verse punishes one, an accomplice who conjoins himself to transgressors with the same punishment, etc. And we may learn from this; that so much the more will he who conjoins himself to those who are engaged in meritorious acts, be rewarded, etc. There is no capital punishment, unless two witnesses have warned this culprit. If both of the witnesses have seen him who warned them, they are considered conjoined. The court of Sanhedrin is to be established in Palestine as well as in the countries outside of it. In the large cities but not in the small ones, ... 1–14

CHAPTER II.

MISHNA *I.* TO *V.* The following are exiled, he who kills a person unintentionally. The act of one who thought that such is allowed is not to be considered an accident, but almost intentional. If one has climbed a ladder and the step under him broke and killed, one Boraitha declares him guilty, etc. If the iron of a hatchet slipped off and killed. One threw a lump of brittle stone at a date tree, and the dates fell off and killed (a child). What is considered second force according to Rabbi? If one throws a stone in a public ground and it kills, he is to be exiled. The punishment of exile attaches but to a private set. Is hewing wood always considered a private affair? All kinds of human beings are exiled when they killed by accident an Israelite. A father is exiled if he killed his son accidentally. A heathen or a slave is to be exiled or punished with stripes through an Israelite and vice versa. A stranger or an idolator who has killed even unintentionally is put to death. Only then when, thinking that such is allowed; "For he is a prophet." How is this to be understood? Because he is a prophet she has to be returned, but if a layman, she would not, etc. Exile does not apply to a blind one. An enemy is not exiled (as such a punishment does not suffice). If the rope to which the man's instrument was attached, broke—then he is exiled; but if the instrument slips out of his hand, exile is not sufficient. Whither are they to be exiled? To the cities of refuge, etc. They were also obliged to prepare roads from one city to the other. Formerly all murderers, accidental as well as intentional, used to flee to the cities of refuge, etc. "Giliad is become a city of workers of wickedness," etc. What does this expression mean? The city of refuge must neither be too large nor too small, but middle-sized ones. Be situated in places where there is water and markets. If a disciple is exiled, his master is exiled with him; because the expression, "and live," means you shall supply him with the sources of moral life. He who loves the abundance of scholars possesses the fruit of knowledge. I learned much from my masters, more, however, from my colleagues, and still more from my disciples. The Holy One, blessed be He, appoints them into one inn, and he who had killed intentionally is placed under a ladder, while the other, who killed unintentionally, descends the steps, falls and kills him. According to one he wrote only the eight verses, which begin with. "And Moses died," etc., ... 14–28

MISHNA *VI.* TO *X.* There is no difference between the high priests who were anointed with the holy oil, etc. Therefore the mothers of the priests used to support the murderers with food and clothes, etc. It is counted as a sin to the priest who should pray that no accident might happen in that generation. If a sage has put some one under the ban conditionally, etc. The forty years during which Israel was in the desert, the remains of Judah were dismembered in his coffin until Moses prayed for him, etc. If after the decision has been rendered, the high priest dies, he is not exiled, etc. If it happens that a murderer goes outside of the limit, etc. What has the high priest done that the murderer's fate should depend upon his death? Joab erred twice in so acting: (a) he thought that the horns of the altar protect, etc. The cities of refuge are not given for cemeteries. If one killed accidentally in the city of refuge, he is to be exiled, etc. If a murderer

was exiled, the townsmen like to honor him, he has to say to them : "I am a murderer," . . . . 28–34.

CHAPTER III.

MISHNA *I.* TO *V.* To the following stripes apply: Crimes under the category of Korath, as well as under that of capital punishment, are also punished with stripes if they were so warned. To a negative command, which is preceded by a positive one, stripes apply. The culprit does not get stripes unless he abolishes the succeeding positive command. R. Simeon b. Lakish, however, differs, and says : He is free from stripes only when he has fulfilled the succeeding one. He who took the mother-bird with her children gets, according to R. Jehudah, stripes. It happened with a children teacher who struck too much the children, and R. A'ha excommunicated him ; Rabbma, however, returned him because he could not find as good a teacher. Stripes also apply to him who partook of the first fruit before the ceremony of reading was performed. If a positive succeeds a negative, no stripes apply. A stranger who had consumed sin and transgression offerings before their blood was sprinkled is free from any punishment. Concerning the first fruit, placing it in the temple is the main thing, and not the ceremony of reading. The culpability for second tithe arises only after it has seen the face of the wall of Jerusalem. He who makes a baldness in the hair of his head, or rounds it, etc., is liable. The culpability arises only, then, when he took it off with a razor. What should be the size of the bald spot which would make him culpable? If one made an incision with an instrument he is culpable. For dead he is culpable at all courts whether by hand or instrument. The culpability for etching-in arises only when he has done both, wrote and etched-in with dye, etc. A Nazarite who was drinking wine the whole day is culpable only for one negative. There is an instance that one may plough only one bed and shall be culpable for eight negatives. The number of stripes is forty less one, . . 34–47.

MISHNA *VI.–IX.* The examination as to the number of stripes he can receive and remain alive must be such that can be equally divided by three. If one commits a sin to which two negatives apply, etc. How is the punishment with stripes to be performed? The striker strikes him with one hand so that the strokes shall become weaker. If, after he has been tied, he succeeds to run away from the Court, he is free. As he was already disgraced, he is not taken to be disgraced again. The Lord wanted to make Israel blissful and therefore he multiplied to them his commands. At three places the Holy Spirit appeared. At the court of Shem, etc. Six hundred and thirteen commands were said to Moses, etc. Isaiah reduced them to six. Michah came and reduced them to three. Isaiah (the second) again reduced them to two. "Keep ye justice and do equity." Amos reduced them to one. "Seek ye for me, and ye shall live," . . . . . 47–56.

APPENDIX.

He who speaks ill of his neighbor, he who listens to such evil-speaking, finally, he who bears false testimony deserves to be thrown to the dogs, ... 47–56.

TRACT MACCOTH (STRIPES).

"The Sanhedrin who executes a person once in seven years, is considered pernicious. R. Eliezar b. Azariach said: Even one who does so once in seventy years is considered such. Both R. Tarphon and R. Aqiba said: If we were among the Sanhedrin, a death sentence would never occur." (Mishna X.)

CHAPTER I.

RULES AND REGULATIONS CONCERNING COLLUSIVE WITNESSES IN BOTH CRIMINAL AND CIVIL CASES, AND THE APPLICATION THERETO OF CORPOREAL AND OTHER PUNISHMENTS.

MISHNA *I.*: How should witnesses be made collusive (so that they should be punished)? If, *e.g.*, they testify that so and so (who is a priest) is a son of a divorced woman (whom his father had illegally married, wherefore he lost his priesthood), the court has not to decide that the witness who has falsely testified shall be regarded such (and shall lose his priesthood if he is a priest), but he should be punished with forty stripes; likewise if one testifies that so and so is to be exiled for an unintentional murder, the court has not to decide that he, the witness, be exiled for false witnessing, but he is punished with forty stripes.

GEMARA: How should the text of the Mishna be understood? It states, "how should witnesses be made collusive," and according to the illustration hereafter adduced it ought to be: How should the witnesses not be made collusive (as the punishment of a collusive witness is according to the Scripture that the same which is to be inflicted upon the defendant if the accusation prove true, and it states that such a punishment does not apply to the witness; it furthermore states concerning the case of collusive witnesses, that they are considered collusive only, then, when another party of witnesses come and say that the witnesses in question were with them at another place on the same date on which, according to their testimony, the

alleged crime was done. Hence, only in such cases they are considered collusive, but not otherwise. The Tana of the Mishna refers to this passage (Sanhedrin, p. 261): "Because all who are to be put to death biblically, their collusive witnesses and their abuses are punished with the same, except in the case of the married daughter of a priest," etc. And he (the Tana) adds that there are another sort of witnesses who are not subject to the punishment of collusiveness, but who are to suffer stripes instead, and this are those who testify that so and so is a son of a divorced woman or of such who has performed the ceremony of chalitza.

Whence is this deduced? Said R. Jeoshia b. Levy: From here [Deut. xix. 19]: "Then shall ye do unto him as he had purposed to do unto his brother; to him but not to his descendants" (and if the decision were that he should lose his priesthood, then even his children would be affected). But let the court affect him only and not his descendants? This cannot be done, as the law dictates that it shall be done just the same to him as to the alleged defendant, and if such be the case his descendants would necessarily be affected. B. Pada, however, says: This is to be drawn by *a fortiori* reasoning—viz.: he who has transgressed (by illegal marriage of a divorced woman) does not lose his priesthood, and only his descendants from this marriage lose it. Much less so should the witness who falsely testified lose his priesthood. Rabbina opposed: Were we to use such theory the whole case of collusiveness would be made illusory. As the same *a fortiori* method could be applied thus: He through whose false testimony a man was already stoned, is not to be stoned; so much less so if the accused man was not as yet stoned? Therefore the best is as it is answered above.

"*Is to be exiled.*" Whence is all this deduced? Said Resh Lakish: From here [Deut. xix. 5]: "This one shall flee unto one of these cities," etc., *i.e.*, *this one*, but not his collusive witnesses. R. Jochanan, however, said: This is to be drawn by *a fortiori* reasoning. He who has done such a crime intentionally does not become exiled; so much less so he who is only testifying to such a crime. This statement, however, cannot be taken into consideration, as the reason why an intentional murderer is not to be exiled is that he shall not be atoned. But the witnesses who have not perpetrated such a crime should be exiled, so that they should expiate; therefore, the best interpretation is that of Resh Lakish given above.

Ula said: Where do we find a hint in the Scripture that collusive witnesses shall be punished with stripes (here is quoted from Tract Sanhedrin, p. 20, l. 39 to p. 21 up to l. 17. See there): The rabbis taught, "there are four points concerning collusive witnesses: (*a*) they are not made sons of a divorced woman or of such who has performed the ceremony of chalitza; (*b*) they are not exiled to the cities of refuge; (*c*) they do not pay the atoned money, and (*d*) they are not sold as Hebrew slaves." In the name of R. Aqiba it was said that: Nor do they pay on self-confession. They are not made sons of a divorced woman, etc., as said above, nor are they to be exiled as said above, and they do not pay atoned money, because the rabbis hold that the money which one has to pay in case his ox has killed a person is not considered as a recompense for damages, but as an atonement, and collusive witnesses are not under the category of atonement. And who is the Tana who holds this? Said R. Hisda: It is R. Ismael, the son of Johanan b. Brokah. (See Baba Kama, p. 90, l. 2 from bottom, to 91, l. 16.)

"And they are not sold as Hebrew slaves." R. Hamnuna was about to say that this is only in the case when he, the alleged defendant, has money to pay for the theft, or if the witnesses have money to pay; but in case both have not they are to be sold. Said Rabba to him: It reads [ibid. xxii. 2], "he shall be sold for *his theft*, but not for his collusiveness." The text says in the name of R. Aqiba, etc.: What is his reason? He holds that this is only a fine, and one does not pay fine upon his self-confession. Said Rabba: There is a support to R. Aqiba's theory in the fact that a collusive witness, though he has not committed the crime manually, is nevertheless responsible, and is to be killed in case his testimony caused a death-sentence; and likewise in civil cases he has to pay, although he has done no damage. And similarly said R. Na'hman.

R. Jehuda in the name of Rabh said: A collusive witness pays his share. What does this mean? Shall we assume that in the case where two witnesses were found collusive each of them pays half? This is already stated further on in a Mishna. Or does it mean that if one of them was found collusive, he has to pay half? This is not so, as there is a Boraitha which states that there is no payment imposed unless both are found collusive. Said Rabha: He speaks of the case when one came before

the court testifying: I, together with so and so, have testified before such and such a court, and we, having been found collusive, the court has decided that we have to pay such and such an amount. And lest one say that, as his testimony does not make liable his colleague, he himself should not be responsible either, he comes to teach us that this is not so.

MISHNA *II.*: We testify that so and so has divorced his wife and has not paid the amount mentioned in her marriage contract (and that testimony was false). Although they have not done any damage, as the husband has to pay the marriage contract at some time, they are nevertheless not free from the following payment—namely, it is to be appraised how much one would risk for her marriage contract in case she should remain a widow or be divorced. However, if she died while her husband is still alive, he would inherit her (and such an amount they have to pay).

GEMARA: How should the appraisement be made? (here are two kinds of risks, one can risk to buy the inheritance of a woman from her husband, who would inherit her in case of her death when he is still alive; and one can also risk to buy this from the woman in case her husband die first. However, there is a great difference concerning the amount one would risk. As a rule, one would give much more when buying it from the husband than from the wife). According to R. 'Hisda the appraisement must be of the husband's, and according to R. Nathan b. Oshia, of the wife's estate. Said R. Papa: It prevails that the appraisement should be as of the wife's, and only to the amount mentioned in her marriage contract, without, however, touching the benefit which her husband has in the fruit of her estate while she is yet alive.

MISHNA *III.*: We testify that so and so owes to his neighbor a thousand zuz on the condition to pay him this debt after thirty days from to-day. He, however, claims that he has to pay the amount at the expiration of ten years: and such was found to be the case. It remains, then, to appraise how much one would give for keeping a thousand zuz ten years instead of thirty days, and such an amount they have to pay.

GEMARA: R. Jehuda in the name of Samuel said: If one made a loan to his neighbor for ten years the Sabbathic year does not annul it, and although when the Sabbathic year will arrive, he would transgress the negative commandment. "He shall not exact it of his neighbor" [Deut. xv. 2], yet at present

this commandment does not exist, and we do not care for the later time. Said R. Kahana: This we have also learned in our Mishna, which states that the witnesses have to pay only the difference between thirty days and ten years. And if the Sabbathic year released the whole debt, they would have to pay the whole thousand zuz. Said Rabha: The Mishna may refer to one who lends his money on a pledge, or to one who transfers his documents to the court; and there is a Mishna teaching that in such cases the Sabbathic year has no effect.

R. Jehuda said again in the name of the same authority: "If one says I will make you a loan with the stipulation that the Sabbathic year shall not release me, it nevertheless releases." Shall we assume that Samuel holds that such is considered a condition against the biblical law, and it therefore does not hold good? Is it not taught (Baba Metzia, p. 126) if one says: I sell this article to you on the condition that you shall not claim any cheating against me, etc.? According to Samuel the condition holds good, though such a condition is against the written law? Yea, but to this it was added by R. Anan that Samuel himself has explained it to him (see continuation, p. 127); and according to this explanation there is no contradiction here. Now as the case here is analogous, it follows that he made the condition: "The Sabbathic year shall not release *me*, it releases nevertheless. But if he says in the condition that *you* shall not release it, then his condition holds good."

There is a Boraitha to the effect that if one loans money to his neighbor without a fixed term of return, he has no right to demand it before the elapse of thirty days. And Raba b. b. 'Hana was about to interpret this Boraitha in the presence of Rabh that such is the case only when he lends on a document, as one would not trouble himself to write a document for less than thirty days; but if it was a verbal loan, he may demand it at any time. Said Rabh to him: So said my uncle that there is no difference between a verbal and a written loan as regards the thirty days, so long as the loan was made without any term. Similarly we have learned in a Boraitha. Samuel said to R. Mathna: You shall not sit down before you have explained me the courses wherefrom is based the Halakha that one shall not demand a loan no matter whether it be verbal or written before the elapse of thirty days? And he answered from [ibid., ibid. 9]: "The seventh year, the year of release," etc. Is it not self-evident that the seventh year is the year of release? why then

the apposition? To tell that there is another release similar, and this is a loan without a term which cannot be demanded before thirty days, as the master said that thirty days, a fragment of a year, is considered a whole year.

MISHNA *IV.*: We testify that so and so owes 200 zuz to his neighbor, and they were found collusive; they have to suffer both stripes and payment, because the negative commandment for the trespass of which they have to receive stripes does not make them pay. And only another verse concerning collusiveness makes them to pay. Such is the decree of R. Mair. The sages, however, maintain that he who pays is not to be punished with stripes. If they testify that so and so has deserved forty stripes, and are found collusive, they are to be punished with twice forty stripes, once on the basis of the negative commandment: "Thou shalt not bear false witness," and, secondly, on that of the commandment: "Shall ye do unto him as he had purposed to do unto his brother"; such is the decree of R. Mair. The sages, however, say: they suffer stripes only once.

GEMARA: This is in accord with the rabbis' theory, which reads [ibid. xxv. 2]: "According to the degree of his fault," which statement is to be explained that he is made responsible for one fault, and not for two. But what is the reason of R. Mair's decree? Said Ula: He bases it upon the case of an evil name, for which crime the law prescribes the double punishment of stripes and payment, and analogous is the case here treated. But is not the payment for an evil name considered a fine? He, R. Mair, holds with R. Aqiba that the payment of collusive witnesses is also required as a fine.

There are others who refer the saying of Ula to the following Boraitha: It reads [Ex. xii. 10]; (see Sanhedrin, p. 185, l. 23, to the end of the par.), and to the question, whence is it known that to a negative commandment that does not contain manual labor, the punishment of stripes does not apply, Ula answered from the case of an evil name stated above. What, then, do the rabbis who do not hold that they shall be beaten twice infer from "Thou shalt not bear false witness"? They need this for a warning to the case of collusiveness. And where is to be found such a warning according to R. Mair? Said R. Jeramaia in [Deut. xix. 20]: "And those who remain shall hear and be afraid, and shall henceforth," etc. The rabbis, however, infer from this passage that such a case must be heralded (see Sanhe-

drin, p. 256). As to R. Mair, he, too, infers from here heralding, as according to him the words "and shall be afraid" would be superfluous, if heralding were not inferred therefrom.

MISHNA *V.*: The fine of money may be divided into two or three shares; however, this is not to be done with stripes. How so? If they have falsely testified that one owes to his neighbor 200 zuz, and they were two or three persons, each of them has to pay his share to complete that amount. But if they have falsely testified that one deserves forty stripes, each of them is to get forty stripes in full.

GEMARA: Whence is all this deduced? Said Abaye: Concerning stripes, it reads [Deut. xxv. 2]: "Wicked"; and [Numb. xxxv. 31] it reads also "wicked" concerning capital punishment, and as that cannot be divided, so stripes are not to be divided either. Rabha, however, said: The reason is this: The punishment ought to be done to him as he had the purpose to do it to his brother. And as each one of them intended that the defendant be beaten with forty stripes, he has to get just the same. But why should not the same be concerning money fine? Because money if counted together completes the amount he should suffer, which is not the case with stripes.

MISHNA *VI.*: Witnesses cannot be made collusive unless the falsehood lies in their bodies; how so? If, *e.g.*, they testify that so and so has killed a person and another party of witnesses came to contradict them, saying: How can you testify so? The killed one or the alleged murderer was with us at that date in such and such a place. They are, nevertheless, not considered collusive (so that they should be killed instead); but if the other party say you yourself were with us at that date in such a place, consequently you could see neither the murderer nor the killed one, then they are considered collusive and are to be killed upon such a testimony. If, thereafter, a third party of witnesses came and made collusive the second party, and a fourth party made collusive the third party, even if the number reach to 100 parties they all are to be killed. R. Jehuda, however, maintains that such parties of witnesses are to be considered στασις, and only the first party is to be killed.

GEMARA: Whence is this deduced? Said R. Ada: From [Deut. xix. 18]: "And, behold, if the witness be a false witness, he hath testified a falsehood against his brother," which means that the body of the witness should be found false. The disciples of R. Ismael taught, it reads [ibid., ibid. xix. 16]:

"Testify against him for any deviation," * which means the testifying itself should be a deviation.

Rabha said: "If two persons testify that one has killed a man in the east side of such and such a palace, and another party of witnesses come, saying that the same witnesses were with them in the west of the same, it is to be investigated if, while standing on the west side, one can see what is going on in the east side, they are not to be considered collusive, otherwise they are." Is this not self-evident? Lest one say that we have to investigate, perhaps their sight is better than the usual one, so that they could see, he comes to teach us that this does not matter. The same said again: "If two have testified that one has killed a person in the City of Sura Sunday morning, and another party came and testified that the same persons were with them in the City of N'hardaia Sunday evening, an investigation is to be made, if it is possible.

If the investigation shows that it is possible for one to walk during that time from Sura to N'hardaia, then they are not collusive; otherwise they are." Is this not self-evident? Lest one say it is to be feared perhaps the man went to the latter city in a balloon, † he comes to teach us that such fear must not be taken into consideration.

And he said again: If they testify that on Sunday one has killed a person and are contradicted by another party that on Sunday they were with them, however it is a fact that the same person has killed a man on Monday; or even if they said that this man killed a person on Friday, the collusive witnesses are to be put to death, because at the time they testified the defendant was not as yet sentenced to death. But if they testified that the death sentence occurred on Sunday, and the other party testifies that they were with them at that time, the sentence, however, having occurred on Friday, or even on Monday, the first party is not to be considered collusive, because at the time they testified, the defendant was already sentenced to death. And the same is the case concerning fines. If, for instance, they testify that so and so has stolen an ox, slaughtered him or sold, on Sunday (for which he has to pay four and five fold), and the other party says that on Sunday they were with

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* Leaser translates "wrong"; however, he is wrong according to the sense in the text.

† The text says it shall be feared that they went there on a flying camel. We have rendered it a balloon, as the sense is the same.

them, but the defendant did so on Monday, the first party is subject to the fine, because on Sunday the defendant was not as yet liable. However, if they say that the accused has done so on Friday; or even if they say that the decision of the court occurred on Monday the first party is not considered collusive, because at the time they testified, the man was already sentenced to a fine.

"*R. Jehuda, however, said,*" etc. But according to him that all the parties are *staçis*, why should the first party be put to death? Said Rabha: He means to say that if there was only one party of witnesses. But did he not say the first party only? This difficulty remains. A woman once brought witnesses, and they were found false. She then brought another party, who were also found false. She then brought a third party. Said Resh Lakish: This woman is to be considered suspicious whose purpose is to use false witnesses. Said R. Alazar to him: Because she is suspicious should all Israel be suspected of testifying falsely? Such a case happened also before the court of R. Johanan, and Resh Lakish said the same as above. But R. Johanan exclaimed: "If she is suspicious should all Israel be suspected?" He (Resh Lakish) looked at R. Alazar rebukingly, saying: You have heard your statement from Bar Naf'ha (R. Johanan), and you have not mentioned his name! Shall we assume that R. Johanan is in accordance with the rabbis of our Mishna, and Resh Lakish is in accordance with R. Jehuda? Nay. Resh Lakish may say: "I am in accordance even with the rabbis, as in that case there was no one who searched for witnesses. In this case, however, the woman was searching for them. And R. Johanan may say: "I am in accordance with R. Jehuda"; however, this case is different, as she may have thought that the first parties were aware of her case, and she erred. The third party, however, may be aware of it.

MISHNA *VII.*: Collusive witnesses are not to be killed unless the sentence of capital punishment for the defendant is rendered. As only the Saducier declare that the collusive witnesses are put to death after the defendant was executed. Because it reads [Ex. xxi. 23]: "Life for life," to which the sages answered: Is it not written: "It shall be done to him as he had purposed to do unto his brother"? which means that his brother is still alive. Why, then, is it written "Life for life"? Lest one say that they should be executed as soon as their testimony was accepted, therefore it reads, "Life for life," to teach

that they are to be put to death only, then, when the death sentence for the defendant was already rendered.

GEMARA: There is a Boraitha Biribi says: If the man who was accused by them was not executed as yet, the collusive witnesses are put to death; but if he was already executed, they are not. Said his father: "My son, can this not be argued by *a fortiori* reasoning that they should be put to death, if the accused was executed?" And he answered: "My master, have you not taught me that there is no punishment on the ground of *a fortiori* conclusions?" And this we have learned in the following Boraitha: It reads [Lev. xx. 17]: "If a man take his sister, the daughter of his father, or the daughter of his mother," from this we know only about the daughter of his father, not of his mother, and *vice versa*. But where do we know that he is guilty when she was the daughter both of his father and mother? To this it reads at the end of this verse, "The nakedness of his sister hath he uncovered." And this is written only for the purpose that one should not say that such is to be drawn by *a fortiori* conclusion, thus: If he is guilty for his sister who was only from one side, his father's or mother's, how much the more should he be guilty when she was his sister from both sides? Hence, from this we have to learn, that there is no punishment based on *a fortiori* conclusions. Thus far concerning punishment; but whence do we know that the same is the case concerning warning? To this it reads [ibid. xviii. 9]: "The nakedness of thy sister, the daughter of thy father, or the daughter of thy mother." And it is also repeated [ibid., ibid. ii.]: "She is a sister," etc. Also for this purpose one shall not base this on *a fortiori* conclusion. All this is concerning capital punishment. But whence do we know that the same is the case with stripes? From an analogy of the expression "wicked" stated above (p. 7) and whence do we know that the same is the case concerning exile? From the analogy of expression "murder" as stated above. There is a Boraitha. R. Jehuda b. Tabai said: "May I not live to see the consolation of our nation, if I have not killed a collusive witness for the purpose of removing from the mind of the Saducier, who say that, collusive witnesses are not put to death, unless their accused were executed. Said Simeon ben Shata'h to him: I, too, swear by the consolation of our nation that you had shed innocent blood, as the law dictates that witnesses should not be put to death unless both of them are found collusive. Then Jehuda ben Tabai decided that he

shall not render any decision before consulting Simeon ben Shatah. And all his lifetime he used to prostrate himself upon the grave of that witness. And a voice was heard. People thought that this was the voice of the dead one. But Jehuda told them that it was his own voice, saying, "You will see that after my death no voice will be heard."

MISHNA *VIII.*: It reads [Deut. xvii. 6]: "Upon the evidence of two or of three witnesses, shall he that is worthy of death," etc. If the evidence of two persons is sufficient, why does the Scripture mention three? To compare the evidence of three to that of two in the case of collusiveness, as another party of two, make the first party of two collusive, so they make them collusive even if the first is of three. And whence do we know that, even if they were a hundred persons, the evidence of two persons is sufficient? To this it reads: "Witnesses." R. Simeon, however, maintains that as two cannot be put to death, unless both of them are found collusive, so is it if they were three, all of them must be found collusive. And even if their number reaches a hundred, all of them must be found collusive before sentencing one of them to death. R. Aqiba, however, maintains that the third witness mentioned in the Scripture was not for the purpose to make for him the punishment more lenient, but, on the contrary, to make it more rigorous—viz., lest one say as the testimony of the third one was superfluous, because the evidence of two suffices, and, therefore, he should not be punished at all. The Scripture terms the third one in order to make him equal with the former two. From this we see that the verse punishes one, an accomplice who conjoins himself to transgressors, with the same punishment to be inflicted upon the transgressors themselves. And we may learn from this: That so much the more will he who conjoins himself to those who are engaged in meritorious acts, be rewarded equally with them. Three witnesses are also equal to two in case one of them was found a relative or legally unfit for witnessing, as it is in the case of two when the testimony is invalidated, so it is in the case when one of the three was found such. And the same law applies even when their number reaches a hundred, from the expression "Witnesses." Said R. Jose: This is said concerning criminal cases only, but in civil cases, if one was found a relative or unfit, the evidence of the remainder is to be taken into consideration. Rabh, however, said, that as regards this there is no difference between civil and criminal

cases. However, this rule holds good only when the relatives took part in warning the trespasser; but if they did not, the evidence of the others must be taken into consideration, since, if not, what could two brothers do when both saw that some one has killed a person (and there were also some other ones who have seen the murder, should then the testimony of the others be eliminated as void because there were also two brothers) ?

GEMARA: Rabha said: The Mishna treats of a case where all of them have testified at once. Said R. A'ha of Difti to Rabbina: How could such a thing be possible with a hundred persons; could all of them testify at once? And he answered: It means that every one of them has testified just as his colleague has finished his testimony.

"*What could two brothers do?*" But how shall the court examine them? Said Rabha: They are to be questioned for what purpose they came here: to testify, or merely to see? If they say, we came to testify, then, if there was a relative or an unfit among them, their testimony is void; but if they say that merely to see, then must be taken into consideration the testimony of the others, since what could two brothers do, etc., as illustrated in Mishna.

It was taught: R. Jehuda in the name of Samuel said: The Halakha rules in accordance with R. Jose. And R. Nachman said: It rules in accordance with Rabbi.

MISHNA *IX.*: If two persons have seen the crime from one window and two others have seen it from another window, and there was one standing in the middle and warning the criminal, if the two parties could see each other, all of them are considered as one party of witnesses. But if not, they are considered two parties. And therefore if one of the parties was found collusive, he (the accused) and they (the collusive) are put to death, and the other party is free. R. Jose, however, maintains that there is no capital punishment unless two witnesses have warned this culprit, as it reads: "Upon the mouth of two witnesses." * Another explanation of the words upon the mouth is that the Sanhedrin must not hear the evidence from a demonstrator (but they themselves must understand the language of the witness).

GEMARA: R. Zuthra b. Tubia in the name of Rabh said:

* The term in the Bible is *al pe* and the Hebrew term for mouth is *pe*, and he takes it literally.

Whence do we know that one witness is not relied upon? From [ibid., ibid. 6]: "He shall not be put to death upon the evidence of one witness." What does the expression, "one witness," mean? If it means that the testimony of one witness does not suffice, this is already stated above, "two witnesses"; hence it means that if two witnesses saw the crime separately, each from another place, and if they themselves could not see each other, such witnesses are not considered conjoined, so that their testimony should be taken into consideration. Furthermore, even if this was from one window, but one has seen it first, and then the other, they are likewise not to be considered conjoined. Said R. Papa to Abayi: Was it necessary to state this after the former statement, that even if each of them has seen the whole crime they are not to be conjoined if they do not see each other? So much the less so if each of them has seen but half of the act. And he answered: He speaks of an adultery case. Rabha said: If both of the witnesses have seen him who warned them, they are considered conjoined. And he said again that the warning suffices even if it comes from the mouth of the killed one. And even if a voice of warning was heard without their knowing whom it is from. R. Na'hman said: The individual witnesses in question are fit for civil cases, as it reads: "He shalt not be *put to death* upon the evidence of one witness," from which we learn about criminal cases only, but in civil cases they are to be considered.

"*R. Jose said,*" etc.: Said R. Papa to Abayi: does R. Jose really hold such a theory? Have we not learned in a Mishna that if an enemy has killed unintentionally, he may be put to death because he is considered vicious, and warned? And he answered: This is not R. Jose from our Mishna, but R. Jose b. Jehuda from the following Boraitha, who said: A scholar needs no warning, for the warning is on the whole only for the purpose, that the court know whether it was done intentionally or unintentionally.

"*From a demonstrator,*" etc. There were two foreigners who appeared in the court of Rabha, and he appointed an interpreter for them. But why did he do so? Is it not stated that the judges must not hear the case through an interpreter? Rabha understood what they said, but he could not answer them in that language.

Ailea and Tubia were relatives of a surety, and R. Papa was about to say that they are fit to be witnesses, because they are

not relatives of the lender and borrower. Said R. Huna b. R. Joshua to him: If the borrower should not pay would not the lender demand the debt from the surety? Hence they are considered relatives in this case, and are not fit to be witnesses.

MISHNA *X.*: If, after the decision had been rendered the guilty one ran away, and thereafter he returned to the same court, his case must not be reconsidered. Everywhere, if two persons standing at any place testify that a decision was rendered for so and so by such and such a court, according to the testimony of the witnesses, so and so, the accused may be put to death upon their testimony.

The court of Sanhedrin is to be established in Palestine as well as in the countries outside of it.

The Sanhedrin who executes a person once in seven years, is considered pernicious. R. Eliezar b. Azariach said: Even one who does so once in seventy years is considered such. Both R. Tarphon and R. Aqiba said: If we were among the Sanhedrin, a death sentence would never occur. To which R. Simeon b. Gamaliel said: Such scholars would only increase bloodshed in Israel.

GEMARA: The Mishna states if he return to the same court his case must not be reconsidered. From which it is to be understood that if he returns to another court, it is to be reconsidered. And in the latter part it states that if two testify that such a decision was rendered, etc., he is to be put to death without any reconsideration? Said Abayi: This presents no difficulty. If he runs away to a court in Palestine from outside, it is to be reconsidered. As it is stated in the following Boraitha, R. Jehuda b. Dusthai said in the name of R. Simeon b. Shatah: That if one runs from the Palestine court to an outside court, his case must not be reconsidered. But if *vice versa*, it is to be reversed, because of the privilege Palestine has.

"*Sanhedrin are to be established*," etc. Whence is this deduced? From what the rabbis taught. It reads [Numb. xxxv. 29]: "For a statute of justice throughout your generations, in all your dwellings." From this it is inferred that Sanhedrin are to be established in Palestine as well as in the countries outside. But why is it written elsewhere "in thy gates"? To say that "in thy gates" in Palestine, you have to establish courts in every principal city, as well as in the small cities; but in the countries out of Palestine, you have to establish them in the large cities but not in the small ones.

CHAPTER II.

RULES AND REGULATIONS CONCERNING UNINTENTIONAL MURDER AND EXILE WHICH IS THE PUNISHMENT THEREFOR.—WHO IS AND WHO IS NOT SUBJECT TO EXILE.—THE CITIES OF EXILE AND THEIR PREPARATIONS.—THE REDEEMING OF THE EXILED BY THE DEATH OF THE HIGH-PRIEST.

MISHNA *I.*: The following are exiled: He who kills a person unintentionally. If, *e.g.*, one fixes his roof with a machine and the latter falls from his hand and kills a man, or if he takes off a barrel from the roof and it falls from his hand and kills, or if he himself falls from the ladder while descending and kills, he is to be exiled. However, if, while carrying the machine up to the roof, or pulling a barrel on a rope up to the roof, the rope breaks and the barrel falls and kills, or if he himself, while ascending to the roof, falls and kills, there is no exile. As there is a rule that for killing while descending, he is exiled, but not while ascending.

GEMARA: Whence is this deduced? Said Samuel: From [Numb. xxxv. 23]: "And he have let it fall upon him, that he died," which means that it fell in the usual manner. The rabbis taught [ibid., ibid. 15]: "Unawares" means to exclude the case when it was done intentionally; [Deut. xix. 4] "without knowledge" to exclude him who intends to do so. But is it not self-evident that he who kills a person intentionally is to be put to death? Said Rabha: It excludes even him who thought that such is allowed. Said Abayi to him: Is the act of one who thought that such is allowed not to be considered an accident? Answered Rabha: I hold that such is to be considered almost intentional.

Further on it is stated "without knowledge to exclude him who intended to do so." Is this not self-evident? Said Rabha: *i.e.*, to exclude him who intended to kill an animal, and killed a man, or miscarried and killed a full term child.

The rabbis taught: It reads [Numb. xxxv. 22]: "If he have pushed against him accidentally" means to exclude a cor-

ner (where the injured one has entered, while the murderer was going from the opposite with a knife in his hand and wounded the former). " Without enmity " excludes the case where the murderer was his enemy. " Pushed " means with his body. " Or have cast upon him " includes the one who injured while bending himself for the purpose of raising his instrument to land the blow harder. " Without lying in wait " excludes him who intended to strike in one side, but struck in the opposite. [Ex. xxi. 13] " And if he did not lie in wait " excludes the one who intended to throw it as far as two and threw it four yards. [Deut. xix. 5] " And he that goeth into the forest with his neighbor " means as the entrance into a forest is permitted to every one, so also must the place be open where the accident happened—be open to every one—to the injurer as well as to the injured. R. Abuhu questioned R. Johanan: What is the law in this case: If one was climbing a ladder and, a step having been broken under him, he fell down and killed; is this to be considered on *ascending*, for which one is not liable, or on *descending*, for which he is? And he answered: It is already explained above: That a *descending* for the purpose of *ascending* is included. He (Abuhu) objected to him from the following: " This is the rule, that if while descending he is to be exiled, but if while ascending, he is not." Does not the expression " while ascending " include a similar case to that about which I questioned you? And he answered: According to your theory, the expression " while descending " must also include something. And what is it? You must then say that it means to include chopping, *e.g.*, a butcher that chops meat and kills a man (by a slip of the hatchet, etc.); similarly it may be said that the expression " while ascending " means to exclude same. As we have learned in the following Boraitha: " A butcher who has chopped meat," etc. One Boraitha declares him guilty if the killing was in front of him, but not if it happened behind. And another Boraitha asserts the contrary. A third one, however, declares him free at any rate. And they are not contradictory, since one of them speaks of the case that, while he was bending himself, the accident took place in front of him, he is then responsible. And if through his rising the accident happened behind, he is free. And the other two Boraithas speak of cases which happened to be in the contrary and otherwise.

Shall we assume that in this case the Tanaim of the following Boraitha differ—viz.: If one has climbed a ladder and the

step under him broke and killed, one Boraitha declares him guilty, and another free. Is it not because one considered his climbing as *ascending* and the other as descending? Nay, according to both, it is considered as *ascending*. But that which declares him liable means in respect of damages, and that which declares him free means from exile.

MISHNA *II.*: If the iron of a hatchet slipped off and killed, according to Rabbi he is not to be exiled, and according to the sages he is. The same differ also as regards the case where a piece of wood split off from the felled tree and kills; according to Rabbi he is, and according to the sages he is not exiled.

GEMARA: There is a Boraitha. Rabbi said to the sages: Does it read [Deut. xix. 5]: "The iron slippeth from *its* tree"? It reads, "from *the* tree." And secondly, in the beginning of the verse the expression is "to hew (*etz*) trees," and here with "the iron slippeth," the same word, *etz,* is used, whence, as above, it means that a chip slipped from the tree, so by the expression "from the etz" is meant a piece of wood split from the tree. Hence, he is to be exiled. Said R. Hiye b. Ashe in the name of Rabh: Both (the sages and Rabbi) took their opinion from one and the same passage cited above. Rabbi holds that the law must be decided in accordance with the Masora writing, which is "*v'nishshel*," *i.e.*, and the iron chips off a part of the wood. And the rabbis hold that the attention must be called to the traditional reading which is *v'nashal, i.e.*, "and the iron slips off the helve." But does Rabbi indeed hold that attention must be given to the *Masora?* Did not R. Itz'hak b. Joseph in the name of R. Jo'hanan say: Rabbi, R. Jehuda b. Roietz, the school of Shamai, R. Simeon and R. Aqiba all hold that the attention must be given to the traditional reading? For this purpose Rabbi added in his discussion "and secondly," etc.

R. Papa said: If one threw a lump of brittle stone at a date tree and the dates fell off and killed (a child), we come to the differing of Rabbi and the sages mentioned in our Mishna.

Is this not self-evident? Lest one say that Rabbi would consider this as a secondary force (*i.e.*, the killing was not the result of the direct force of the man who struck the tree, but of the second force of the tree), he came to teach us that it is not so. What then is considered second force according to Rabbi? If, *e.g.*, he struck a bare branch of the tree, and *it* struck the

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branch upon which the dates were growing, and the dates fell and killed.

MISHNA *III.*: If one throws a stone in a public ground and it kills, he is to be exiled. R. Eliezer b. Jacob, however, maintains: If after the stone had been thrown one bent his head and received it, the thrower is free. If one throws a stone in his yard and kills a person, he is guilty if the killed one had a right to enter it, otherwise he is not. Because concerning this case a forest is mentioned in the Scripture, that the place of injuring should be similar to a forest into which every one is allowed to enter; excluding a private yard into which every one is not permitted to enter. Aba Shaul said: As the hewing of wood (mentioned in the Scripture in this case) is a private thing, so also the punishment of exile attaches but to a private act; excluding, *e.g.*, a father who struck his son, or a teacher his pupil, or the messenger of the court who was on duty.

GEMARA: In public ground! Then he must be considered an intentional murderer? Said R. Samuel b. Itz'hak: It speaks that the accident occurred while he was removing his wall (see the discussion to this answer in Baba Kama, p. 72, l. 11–26).

"*R. Eliezer b. Jacob said,*" etc. The rabbis taught: It reads [Deut. xix. 5]: "And find* his neighbor," to exclude him who causes himself to be found under the stone. And from this R. Eliezer b. Jacob inferred his theory, that if after the stone was already thrown, one has put his head under it and was killed, the thrower is free.

"*As hewing wood,*" etc. One of the rabbis questioned Rabha: Is hewing wood always considered a private affair? Is there not a meritorious act to hew wood for making a *Sukka* or for the purpose of burning it upon the altar? Hence, if an accident happened by such an act, let him be free. And he answered: This cannot be considered so, as a *Sukka* can be prepared from hewed wood, and the same it is with the altar. Hence, such an act cannot be considered meritorious.

MISHNA *III.*: A father is exiled if the accident happened to his son, and *vice versa.* All kinds of human beings are exiled when they killed by accident an Israelite; and same is exiled if he killed one of *them* accidentally, except a proselyte (who accepted upon himself only the seven commandments which

* Leeser translates "striketh" according to the sense. The text, however, takes it literally.

were given to the descendants of Noah) who is to be exiled only, then, when he killed accidentally a proselyte like himself.

GEMARA: The Mishna states: A father is exiled if he killed his son accidentally. Was it not taught above that a father who struck his son is excluded? It speaks of a case where the son was already a learned one; or of a father who taught a trade to his son, who had had already another trade.

"*And the son may be exiled*," etc. There is a contradiction from the following. It reads [Numb. xxxv. 15]: "That killeth any person unintentionally." "Any person" means to exclude him who struck his father? Said R. Ka'hana: This presents no difficulty; the cited Boraitha is in accordance with R. Simeon, who holds that choking, which applies to killing one's father, is more rigorous, and such cannot be atoned. And our Mishna is in accordance with the rabbis, who hold that the sword is more rigorous than choking. And therefore the sword applies to parricide; however, an error in a crime to which the sword applies, can be atoned.

"*All kinds of human being*," etc. What does the expression "all" mean to add? If a heathen and a slave, this was taught by the rabbis: A heathen or a slave is to be exiled or punished with stripes through an Israelite and *vice versa*. But how is this to be understood? It is correct that they are to be exiled in case an Israelite was accidentally killed by them, and by stripes if they cursed an Israelite. But how can this be done with an Israelite? It is correct that he is exiled when he killed one of them accidentally; however, how can he be beaten if he cursed one of them? Is it not written [Ex. xxii. 27]: "And a ruler among thy people thou shalt not curse." And it was explained that it speaks of him who acts according to the rules of thy people. Said R. A'ha b. R. Aika: It speaks of a case that one of the above-mentioned has hit an Israelite in such a manner as could not be appraised with payment. As R. Ami said in the name of R. Jo'hanan, that in such a case the heathen gets stripes. And the same is the case when an Israelite hits a heathen. And we do not compare the case of hitting with the case of cursing.

'*Except a proselyte*," etc. There are some who presented a question of contradiction in the following passages—viz. [Numb. xxxv. 15]: "For the children of Israel, and for the stranger and for the sojourner among them, shall these six cities," etc., while [ibid., ibid. 12] "And these cities shall be

unto you for a refuge," which means to exclude strangers. Said R. Kahana: "This presents no difficulty; verse 12 means in case the stranger killed an Israelite, while verse 15 speaks of a stranger who killed one of his like." But there is a contradiction from the following: "And therefore a stranger, or an idolator who has killed even unintentionally is put to death; hence, it compares a stranger to an idolator, as in the case of an idolator there is no difference whether he kills a person of his like, or any person. The same is the case with a stranger." Said R. 'Hisda: "This presents no difficulty, as one Boraitha speaks of him who killed while *descending*, and the other while *ascending*. He who killed while descending, in which case an Israelite is to be exiled, is also exiled; but if he killed while ascending, in which case an Israelite is free, is put to death." Said Rabha to him: "Is it not to be drawn by *a fortiori* argument that in such a case he is to be free; namely, if while descending, in which case an Israelite is exiled, he is also exiled only; in case of ascending, in which an Israelite is free, so much the more he should not be put to death?" and therefore, says Rabha, that only then when the stranger has killed intentionally, thinking that such is allowed; and this is in accordance with his foregoing theory (p. 15) that such is to be considered almost intentional. Abayi and R. 'Hisda, however, consider such a case an accident. Rabha objected to them from the following [Gen. xx. 3]: "Behold, thou shalt die for the sake of the woman whom thou hast taken." Does this not mean that he will die upon the decision of a human court? (Hence, although Abimelech thought she is single, nevertheless the court would sentence him to death)? Nay, it means he deserves death by Heaven. And as evidence to this can be adduced, the expression [ibid., ibid. 6] "against me." But how can this theory be taken as evidence? Is it not written [ibid. xxxix. 9] "and sin against God"? Does this mean and not against men? It surely means that for such a sin against God he will be tried by the human court (which punishes adultery with death).

Abayi objected to Rabha from [ibid. xx. 4]: "Lord, wilt thou then slay also a righteous nation?" (Hence we see that his uncertainty is considered accidentally.) Nay, this objection was already met as follows: It reads [ibid., ibid. 7]: "For he is a prophet." How is this to be understood? Because he is a prophet she has to be returned, but if a layman, she would not

have to be returned? We must then say that this passage is to be interpreted in accordance with R. Samuel b. Na'hman thus: "Thou shalt return the wife at any rate, and to thy question, 'Lord, wilt thou then slay also a righteous nation? . . . . She is my sister,' etc., the answer is, he is a prophet, and has learned to say so from thyself." Usually, when a guest comes to a house, he is questioned about eating and drinking, but not whether the woman accompanying him is his wife or sister. (In his country, however, Abraham said that she is his sister only because he was questioned.) From all this it is to be inferred that a descendant of Noah is put to death because he had to learn and did not.

MISHNA *IV.*: Exile does not apply to a blind one. So says R. Jehuda. R. Meyer maintains that it does. An enemy is not exiled (as such a punishment does not suffice). R. Simeon, however, maintains: An enemy is to be put to death, for he is considered vicious. To which R. Simeon said: "It depends upon circumstances; sometimes such is exiled, and at other times he is not. For this is the rule: If there is a possibility to think that he killed intentionally, exile is not sufficient; but if such is not the case, he is exiled."

GEMARA: The rabbis taught [Numb. xxxv. 23]: "Without seeing" means to exclude a blind one who cannot see at all. So R. Jehuda. R. Meyer, however, maintains that this *includes* him; and their reasons are as follows [Deut. xix. 5]: "Into the forest," where, as usually, also the blind go; therefore the expression "without seeing" excludes him. Such is the reason of R. Jehuda. And R. Meyer's is: Because "without seeing" is an exclusion, and there being another expression "without knowledge," which is also an exclusion, we have two exclusions, and there is a rule that an exclusion after an exclusion comes to add something; hence it adds a blind one. R. Jehuda, however, explained the last expression to mean the exclusion of an intentional murder.

"*An enemy is to be put to death.*" Why, he was not warned? Our Mishna is in accordance with R. Jose b. Jehuda, who says above (p. 13) that no such warning is needed.

"R. Simeon said," etc.: There is a Boraitha: How does R. Simeon illustrate his theory? If, *e.g.*, the rope, to which the man's instrument was attached, broke—then he is exiled; but if the instrument slips out of his hand, exile is not sufficient, as he was the enemy of the killed, it is to be supposed that he did

it intentionally. But have we not learned in another Boraitha: R. Simeon said: He is not exiled "until the entire ramming machine slips out of his hands"? Hence it contradicts in both cases: in case the rope broke, and in case the instrument slips. Nay, there is no contradiction in case of the rope; as one speaks of an enemy and the other of a friend. There is also no contradiction in case of the slipping of the instrument; as one Boraitha is in accordance with Rabbi (who says: If such a case happen to a friend he is exiled), while the other is in accordance with the rabbis who do not agree with him.*

MISHNA *V.*: Whither are they to be exiled? To the cities of refuge, three of which are situated on the other side of the Jordan and three in the land of Cana'an. As [Numb. xxxv. 14]: "Three of these cities shall ye give on this side of the Jordan, and the three other cities shall ye give in the land of Cana'an." However, until the latter three were selected, those on this side of the Jordan have not protected as yet; as it reads [ibid., ibid. 13]: "six cities of refuge," which means none of them protects unless all the six are selected.

They were also obliged to prepare roads from one city to the other; as it reads [Deut. xix. 3]: "Thou shalt put in order for thyself the (way to them), and divide into three." Two scholars are to accompany the exile on the road to protect him, so that he shall not be killed by the relatives of the deceased, and they are to reconcile them. R. Meyer, however, said: He himself has to reconcile them, as it reads [ibid., ibid. 4]: "And this is the talk † of man-slayer." R. Jose b. Jehuda, however, said: Formerly all murderers, accidental as well as intentional, used to flee to the cities of refuge; the court then sends after them and tries them. He who was found guilty was executed, otherwise he was freed; and him who was to be exiled they returned to the city of which he was taken; as it reads [Numb. xxxv. 25]: "The congregation shall restore him to the city of his refuge."

GEMARA: The rabbis taught: Three cities Moses separated on this side of the Jordan, and opposite them Joshua separated out in the land of Cana'an, and they were right oppo-

* In text is not explained the theory of Rabbi and his opponents. Rashi, however, explained this in one version as we did. He brought also some others in which he doubts.

† The term for talk in Hebrew is "dbar," literally "talk" or "word"; Leeser, however, translates it "case," in accordance with the sense.

site: one against the other, as two rows in a vineyard." Namely [Joshua xx. 7] "Hebron in Judah," opposite [Deut. iv. 43] "Bezer in the wilderness," "Shechem in the mountain of Ephraim," "Ramoth in Gil'ad," "Kedesh in Galilee in the mountain of Naphthali," "Golan in Bashan." "And divide into three" means there shall be the same distance from South Palestine to Hebron as from Hebron to Shechem; and from Hebron to Shechem as from the latter to Kedesh, and from Shechem to Kedesh as from the latter to North Palestine. Now let us see: three were needed on the other side of the Jordan, and only three for the whole land of Israel? Said Abayi: In Gil'ad there were many murderers, as it reads [Hosea vi. 8]: "Gil'ad is become a city of workers of wickedness, is full of traces of blood." What does this expression mean? Said R. Elazar: They were thirsty to shed blood. Why were the cities on both sides of the Jordan far from the boundary, and the middle one was near? Said Abayi: Because Shechem was also full of murderers; as it reads [ibid., ibid. 9]: "And troops that lie in wait for a man, like the band of priests, they murder on the way to Shechem." * "Band of priests"—what does it mean? Said R. Elazar: They conjoin themselves to kill as the priests conjoin themselves to receive the heave-offering from the barns. But were there not more cities of refuge? Is it not written [Numb. xxxv. 6]: "And in addition to them shall ye give forty and two cities"? Said Abayi: The former protect the refugee at any rate, whether he is aware of that city being a place of refuge or not; while the latter accept him only when he was aware.

Was then the city of Hebron indeed a city of refuge? Does it not read [Judges i. 20]: "And they gave Hebron," etc. Said Abayi: It was only the suburb of it, as it reads [Joshua xxi. 12]: "But the fields of the city, and its villages, they gave to Caleb." Was Kedesh one of them? Does it not read [ibid. xix. 37]: "And Kedesh, and Edre'i," etc.? And there is a Boraitha that the city of refuge must neither be too large nor too small, but middle-sized ones. (The cities mentioned there were, however, all large ones?) Said R. Joseph: "There were two cities of the same name." Said R. Ashi: As, for instance, Sliquus and Aquri of Sliquus.

The text says: Middle ones. To this is added: They must

* Leeser's translation does not correspond at all.

be situated in places where there is water, and also where there are markets; and if such are not found, the same must be established. Also must they be situated near the army, and if the army was diminished, it must be added. If the dwellings in such cities become vacated, there must be brought new people composed of priests, Levites, and Israelites; and ammunition must not be sold in such cities, according to R. Ne'hamayi. The sages, however, allow this. But both agree that neither snares (for catching beasts) nor rope factories must there be established. All this is to prevent the relatives from coming to the cities in question. And R. Itz'hak said: This is inferred from [Deut. iv. 42]: " And that he should flee unto one of these cities and live," which means you shall prepare for him all the necessities of life. And there is a Boraitha that if a disciple is exiled, his master is exiled with him; because the expression " and live " means you shall supply him with the sources of moral life. And R. Zera said: From this we infer that one shall not teach a disciple of bad character. R. Johanan says: If it happens that the head of a college is exiled, the whole college is exiled with him. Is that so? Did not R. Johanan say that the study of the Torah relieves one; for immediately after the verse " in the wilderness " stated above, is written " and this is the law " ? This presents no difficulty: it relieves only at the time he is occupied with it, but not otherwise. And if you wish, it may be said that it relieves from the Angel of Death; as it happened with R. Hisda, who was studying continuously, so that the Angel of Death could not come near him until he caused the cedar in the yard of the college to break, the noise of which stopped his studying, and the Angel of Death took hold of him. R. Tan'hum b. Hanilaye said: Why is the tribe of Reuben mentioned first among the cities of safety? Because he was the first to save Joseph from his brothers, as it reads [Gen. xxxvii. 21]: " And when Reuben heard it, he delivered him out of their hand."

R. Simlae lectured: It reads [Deut. iv. 41]: " Then Moses set aside three cities on this side of the Jordan, toward the rising of the sun." The Holy One, blessed be He, said to Moses: " Thou hast made the sun shining toward the murderers."

R. Simaye lectured: It reads [Eccl. v. 9]: " He that loveth money will never be satisfied with money; but he that loveth abundance, will finally have income." * He that loveth money

* Leeser's translation does not correspond at all.

means Moses, our Master, who was aware that the three cities on the other side of the Jordan do not accept until the other three cities are selected; nevertheless he selected them, saying: I shall not fail to perform a meritorious act which came to my hand. And "he that loveth abundance"—who is fit to lecture before a crowd, he who possesses the fruits of knowledge (of Bible, Mishna, Halakha and Hagada). And this is what R. Elazar said: It reads [Psalm cvi. 2]: "Who can utter the mighty acts of the Lord? He who can publish all his praise." (He takes the latter not as a question, but as answer to the former.) The rabbis, according to others, Rabba b. Mari explained this passage thus: He who loves the abundance of scholars possesses the fruit of knowledge; and the rabbis looked upon Rabha b. Rabba who possessed such a quality. R. Ashi said: He who likes to learn among a crowd of scholars possesses the fruit of their knowledge. And this is what R. Jose bar Hanina said: It reads [Jer. l. 36]: "The sword on the *badim* means the sword may cut the necks of the scholars who are studying separately each for himself; and not only this, but they become also foolish and also commit a crime thereby." * Rabina said: He who loves to teach many, has the fruit of knowledge. And this is what Rabbi said: I learned much from my masters, more, however, from my colleagues, and still more from my disciples.

R Jehoshua b. Levi said: It reads [Psalm cxxii. 2]: "Our feet are now standing within thy gates, O Jerusalem." Who caused that our feet shall conquer the enemy and stand within the gates of Jerusalem? The same gates in which the Law was studied. He said again: It reads [ibid., ibid. 1]: "I was rejoiced when they said unto me, Unto the house of the Lord let us go." David said before the Holy One, blessed be He, Lord of the Universe, I have heard people say, When will this man die, so that Solomon, his son, shall build the Holy Temple and we will rejoice? And He answered [ibid. lxxxiv. 11]: "For better is a day in thy courts than a thousand." I like one day in which thou art occupied with the Law better than the thousand burnt-offerings which Solomon, thy son, will sacrifice before me in the future.

"*To prepare roads*," etc. There is a Boraitha. R. Eliezer

* The analogy of expression used in text to infer the foolishness and sin mentioned, we omitted; it was also impossible to use the translations of Leeser, etc., as the Talmud has here its own way.

b. Jacob said: "The word 'refuge' was written at every crossing for the purpose that the murderer shall recognize the way to take. Said R. Kahana: This is inferred from the above-cited verse [Deut. xix. 3], which means you shall establish all preparations needed on this way.

R. Hamma b. Hanina, when he wanted to lecture on this case, used to begin with [Psalm xxv. 8]: "Good and upright is the Lord: therefore he pointeth out to sinners the right way," saying, If He puts the sinners in the right way, so much the more the upright.

Resh Lakish used to begin his lecture on this case with [Ex. xxi. 13 and I Sam. xxiv. 14]: "From the wicked proceedeth wickedness." The Scripture speaks about two men each of whom killed a person: one of them intentionally, and the other unintentionally, but there were no witnesses in either of these cases. The Holy One, blessed be He, appoints them into one inn, and he who had killed intentionally is placed under a ladder, while the other, who killed unintentionally, descends the steps, falls and kills him (the one under the ladder). Hence the outcome is: he who has killed intentionally was killed; and the unintentional killer was exiled.

Rabba b. R. Huna in the name of his father, according to others the latter in the name of R. Elazar, said: From the Pentateuch, Prophets, and Hagiographa it is inferred that the way the man likes to follow, he is led upon by Heaven. From the Pentateuch [Numb. xxii. 12]: "Thou shalt not go with them," and [ibid., ibid. 20]: "Rise up, go with them"; from the Prophets [Is. xlviii. 17]: "Who teach thee for thy profit, who lead thee by the way thou shouldst go"; and from Hagiographa [Prov. iii. 34]: "If (it concern) the scornful, he will himself render them a scorn; but unto the lowly doth he give grace."

R. Huna said: If a relative killed the murderer who had already been in the city of refuge, he is nevertheless free; because he holds that the expression "he deserveth not a judgment of death" [Deut. xix. 6] applies to the relative. An objection was raised from the following: The just-cited verse speaks of the murderer; but perhaps it speaks of the relative of the dead? For this purpose it reads [ibid., ibid. 4]: "When he hath not been an enemy to him in time past." Hence the verse in question speaks of the murderer? He (R. Huna) holds with the Tana of the following: The verse in question speaks of the

relative; but perhaps of the murderer? For this it reads (4) "enemy"; hence the verse in question necessarily concerns the relative.

Another objection was raised from our Mishna which states: "Two scholars have to accompany him." Was it not for the purpose of warning the relatives, that, in case they would attempt to slay, the same will be done to them? Nay, only to reconcile them; they should not consider him as a blood-shedder, for he has done it by error. And to the opinion of R. Mair that the murderer himself could do so, it was answered: "Outside defence is more considered."

R. Elazar said: A city, the majority of which are murderers, does not protect; as it reads [Joshua xx. 4]: "And speak in the ears of the elders of that city *his* words," but not the words which they (the elders) had to speak for themselves some time ago. The same said again that a city in which there are no elders does not protect. In this case, however, R. Ami and R. Assi differ. According to one it does, and according to the other it does not. The same differ concerning a stubborn and rebellious son, and also concerning breaking the neck of the heifer [Deut. xxi.], as in all the cases the elders are mentioned, and they are not found; however, he who holds that it does not matter maintains that it was written only because it is usual that a city should have its elders, but not to prevent if there are none.

R. Hama b. Hanina said: Why is the portion of murderers with a strong language [Joshua xx. 1]: "And the Lord *spoke* to Joshua" instead of *said*; and also at the end of the verse (2), "Whereof I have *spoken*"? Because this command was the only one which the Lord commanded Joshua to fulfil what had been already written in the Pentateuch. And whence do we know that *spoke* is stringent language? From [Gen. xlii. 30]: "Spoke roughly." However, concerning this subject R. Jehudah and the rabbis differ: according to the one it was because Jeshuah delayed to establish them, and according to the others the reason is as said above.

It reads [Josh. xxiv. 26]: "And Joshua wrote these words in the book of the law of God." R. Jehudah and R. Ne'hamiah differ: according to one he wrote only the eight verses, which begin with "And Moses died"; according to the other he wrote the portion of the cities of refuge. And the latter explains the expression "in the book of the law of God" thus: Joshua wrote

in *his* book that which had been already written in the book of the law of God.

In case the Holy Scrolls were sewn with thread of flax, R. Jehuda and R. Meyer differ: according to the one it is valid; according to the other it is not. The latter's reason is [Ex. xiii. 9]: "In order that the Law of the Lord may be in thy mouth," we see, then, that the Law is compared to Tephilin, and as the Tephilin are to be sewn with thread of a calf, the same is the case with the Holy Scrolls. And according to the other it is compared only as regards the hide of such cattle which is allowed to the mouth, but not concerning other laws. Said Rabh: I have seen the Tephilin of my uncle and they were sewn with thread of flax. (Says the Gemara): The Halakha, however, does not prevail with him.

MISHNA *VI.*: There is no difference between the high-priests who were anointed with the holy oil (in the first Temple) and those who were sanctified by the holy dress (in the second Temple), and even him who has temporarily substituted the high-priest in case of sickness—they all release the murderer by their death. R. Jehudah said: Even the priest who was anointed for the war only. Therefore the mothers of the priests used to support the murderers with food and clothes that they shall not pray death to their sons.

GEMARA: Whence is this deduced? Said R. Kahana: From [Numb. xxxv. 25–28], where the death of the high-priest is mentioned three times, from which we infer the three kinds of priests in the Mishna. And R. Jehudah, who adds also the anointed for the war, infers it from verse (32), where the priest is mentioned the fourth time. The rabbis, however, do not care to add same, because the word *high* is not mentioned there, hence it means one of the above-mentioned.

"*The mothers of the priests,*" etc. They shall not pray, but what if they should, would it effect? Does it not read [Prov. xxvi. 2]: "As the bird (cometh) to flit away, as the swallow, to fly off: so will an undeserved curse not come (to fulfilment)"? Said a certain elder: I understood from the lecture of Rabha that it is counted as a sin to the priest, who should pray that no accident might happen in that generation, and he did not. As it happened with one whom a lion has consumed a distance of three passas from R. Jehoshua b. Levi's dwelling, and Elisha did not talk to him for three days. Said R. Jehudah in the name of Rabh: The curse of a sage and be it for nothing, is realized;

and this we see to have been the case with Achithaphel. When David was digging under the altar a hole to reach the watery depth of the earth (-*Shithin*), the water came up and menaced to inundate the world; whereupon David asked: Is it allowed to inscribe the Holy name upon a piece of broken clay and drop it into the water; and as no answer came from the people present, he exclaimed: Whoever amongst ye knows and abstains from answering, shall be suffocated! Then Achithaphel concluded *a fortiori* thus: If the Lord has allowed His name to be erased by water in order to make peace between husband and wife, so much the more so when the peace of the whole world is concerned. Accordingly he decided that it is allowed; David then following this decision dropped the bit of clay with the name on into the water, and the water turned back into its depths. Nevertheless Achithaphel choked himself [2 Sam. 17, 23]; all which corroborates Rabh's saying quoted above by R. Jehudah.

R. Jehudah in the name of Rabh said: If a sage has put some one under the ban conditionally, a release must take place at any rate by the same sage or by some other one. And this is inferred from the case of Judah, of whom it reads [Gen. xliii. 9]: "If I bring him not unto thee," etc. R. Samuel b. Na'hamoni in the name of Jonathan said: It reads [Deut. xxxiii. 6–7]: "May Reuben live . . . this is the blessing of Judah." (Why, then, is Judah mentioned just after Reuben and also his blessing distinguished with the expression "and *this*"?) Because all the forty years during which Israel was in the desert, the remains of Judah were dismembered in his coffin until Moses arose and prayed for him, saying: Lord of the universe! Who caused Reuben to confess if not Judah? Hear, Lord, the voice of Judah!" Immediately, then, the members of his body were placed in their order. However, he was not allowed to enter the heavenly college until Moses prayed: "And bring him unto his people." Still he could not discuss with the rabbis; to this Moses said: "Let the power of his hand contend for him!" Still he could not answer questions; thereupon Moses said: "And be thou a help to him from his adversaries."

The schoolmen propounded a question: When is the murderer released? Does the release of the murderer require the death of all those priests mentioned in the Mishna or the death of one of them suffices? Come and hear: If his decision was rendered at the time when a high-priest did not exist, he remains there forever. Now, if he is released by the death of one

of them, let him be returned by the death of a substitute? Hence he must wait until the death of them all. However, perhaps the Mishna speaks of a case where there was no substitute?

MISHNA *VII.*: If after the decision had been rendered the high-priest dies, he is not exiled. If, however, the priest dies before it was rendered and another priest was appointed and the decision was then rendered, he returns on the death of the second one. If, however, his decision was rendered while a high-priest did not exist, or he was to be exiled, because he killed a high-priest, or a high-priest who himself killed accidentally, he never returns from his exile.

The murderer is never to go out from his place of exile even if he was a witness to a meritorious or to a civil, or even to a criminal case. And even if Israel needs him and should he be a captain in Israel, like Johab b. Zeruiah, he must not go out all his life; as it reads [ibid., ibid. 25]: "To the city of his refuge, whither he had fled," which means there shall be his dwelling, there shall be his death, there his burial.

As the city itself protects, so does its limit; therefore, if it happens that a murderer goes outside of the limit and the relatives of the deceased meet him, according to R. Jose, the Galilean, it is a meritorious act for the relatives to kill him; and if a stranger kills him he is not responsible. R. Aqiba, however, maintains that a relative is not responsible, but it is not meritorious; while a stranger is responsible for his death.

GEMARA: What is the reason of the first statement in the Mishna? Said Abayi: This is to be drawn by *a fortiori* reasoning: he who was already exiled is released, so much the more is he who is only sentenced to it. But perhaps he who was already in exile is atoned, but not he who was not there as yet? Does, then, the exile atone? The death of the high-priest atones.

"*Dies before it was rendered*," etc. Whence is this deduced? Said R. Kahana: From [Numb. xxxv. 25]: "And he shall abide in it until the death of the high-priest, who hath been anointed with the holy oil." Who has anointed him? Certainly not the murderer! It, therefore, means: He who was anointed in his days. But what has the high-priest done that the murderer's fate should depend upon his death? He ought to have prayed that the decision of the court be in behalf of the defendant, which he did not.

Abayi said: We have a tradition that if after the decision was rendered the defendant dies, his remains must be carried to

the city of refuge; as it reads [ibid., ibid. 32]: "That he should come again to dwell in the *earth* * until the death of the priest." Dwelling in the *earth* means the grave. There is a Boraitha: If he dies in the city of refuge before the death of the high-priest, his remains may be carried to his native place; as it reads [ibid., ibid. 28]: "The manslayer may return unto the earth of his possession." What is meant by "the earth of his possession"? The *grave*. In the case when after the decision had been rendered, the high-priest was found unfit for his dignity, *e.g.*, he was the son of a married, or of one who performed the ceremony of *Halitzah*, R. Ami and R. Itz'hak of Nafha differ: one holds that the priesthood is dead, and it is equivalent to the death of the high-priest; while the other holds that it is abolished, hence he was never a priest and the decision against the murderer was rendered when a high-priest did not exist; accordingly, he must remain there forever.

"*And a high-priest did not exist*," etc. R. Jehudah said in the name of Rabh: It reads [I Kings ii. 28]: "And Joab fled unto the tabernacle." Joab erred twice in so acting: (*a*) he thought that the horns of the altar protect, while the roof of the Temple protects; and (*b*) he thought that the altar of the tabernacle of Shila protects; in reality, however, the altar of the Temple, only, protects. Said Abayi: He erred also in this: he thought that it protects every one, while in reality it protects only a priest on duty, which was not the case with him.

Resh Lakish said: It reads [Isaiah lxiii. 1]: "Who is this that cometh from Edom, dyed red in his garments from Bozrah?" The heavenly ruler of Rome will err thrice in the future. (*a*) He will think Bozrah protects, while only Bezer does so; (*b*) that it protects even an intentional criminal, while it does so only an unintentional; and (*c*) it protects only a man, but not an angel as he was.

R. Abuhu said: The cities of refuge are not given for cemeteries, as it reads [Numb. xxxv. 3]: "And their open spaces shall be for their cattle, and for their goods, and for all their requirements," *i.e.*, requirements for life, but not for death; and the statement above that the murderer must be buried in the city is no objection, as concerning him the Scripture dictates a separate law.

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* The term in Hebrew is *eretz*, literally *earth*. Leeser translates *land* in accordance with the sense.

"*So does its limit.*" There is a contradiction from the following: It reads [ibid., ibid. 25]: "And he shall abide in it," but not in its limit? Said Abayi: This presents no difficulty: concerning protection it does, but to dwell he is not allowed.

"*Outside of the limit.*" The rabbis taught: It reads [ibid., ibid. 27]: "And the avenger of the blood should kill the manslayer: he shall not be guilty of blood." It is a meritorious act of the avenger to do so; and every stranger may do so if there is no relative. Such is the decree of R. Jose the Galilean. R. Aqiba, however, maintains that if the relative likes to do so, he may; but it is not meritorious. A stranger, however, if he did so, is guilty. The reason of the former is: it does not read "*if* he will kill him; and the reason of the latter is: it does not read "he *shall* kill him." Mar Zutra b. Tubiah in the name of Rabh, however, said that if the relative has killed him while he was out of the limit, he is to be killed if he did it intentionally. But this is not in accordance with R. Jose, nor with R. Aqiba. In accord with whom, then, is his theory? With the Tana of the following Boraitha: R. Eliezer said [ibid., ibid. 12]: "Until he have stood before the congregation for trial." To what purpose is this written (is it not self-evident that he is not to be executed without a trial)? Because (27) reads "should kill . . . not guilty of blood"; lest one say that so it is even if the avenger had killed him before he was tried and found guilty, therefore it reads "until he have stood . . . for trial." R. Jose and R. Aqiba, however, infer from the just-cited passage that if the Sanhedrin themselves have seen one killing a man, they must not execute him unless he has been tried before another court and found guilty.

The rabbis taught: It reads (26): "Should at any time pass the boundary," etc., which means intentionally, but whence do we know as to if he pass unintentionally? Therefore, "at any time," which would be superfluous if not signifying this case. But is there not a Boraitha to the effect that if one has killed intentionally he is put to death, etc.? This presents no difficulty: the Boraitha cited is in accordance with him who holds that the Scripture speaks in accordance with human language, while the rabbis do not hold so. Said Abayi: It seems to me that he who holds that the Scripture speaks in accordance with human language is correct in this case, because his final case should not be more rigorous than the beginning. In the beginning if he had killed a man intentionally he is put to death, and

if unintentionally he is exiled; and the same is to be his final case: if he goes out of the limit intentionally, he is killed; but if unintentionally, he must be returned to his exile.

If a father has killed a son unintentionally, his other son may be considered the avenger in accordance with one Boraitha; another Boraitha, however, states that he must not be so considered. Shall we assume that one is in accordance with R. Jose and the other with R. Aqiba? How can such be borne in mind? Is it not decided (Sanhedrin, p. 246) that a son must not be appointed by the court to punish his father with whatsoever punishment, etc.? Therefore, we must say that one Boraitha speaks of his son, and the other of his grandson.

MISHNA *VIII.*: A tree placed in the limit, but its branches extending outside of it or *vice versa*, in any case the inclination of the branch must be considered.

GEMARA: There is a contradiction from the following: A tree which stands inside but is inclined outside, or *vice versa* if from opposite the surrounding wall and inside, it is considered as inside; and if the same were inclined outside it is considered as outside?* Do you contradict tithe with cities of refuge? Concerning tithe the Scripture relies upon the surrounding wall of the city, but concerning the cities in question it relies upon the dwelling, and one can use his dwelling under the branch but not upon the root of a tree. Rabh Ashi explains the expression of the Mishna, "the inclination of the branch must be considered," with *also, i.e.*, the inclination must also be considered, and so much the more the root of it.

MISHNA *IX.*: If one killed accidentally in the city of refuge, he is to be exiled from one neighborhood to another; and if such happen to a Levite, he is to be exiled from one city to another.

GEMARA: The rabbis taught: It reads [Ex. xxi. 13]: "Will I appoint thee a place," etc., *i.e.*, while thou art still alive. "Whither he shall flee" signifies that if such happen while Israel was still in the desert, they were exiled. And where to?—to the camp of the Levites. From this it was said that if it happen to a Levi that he killed, he is exiled from one district to another; and even if he was exiled to the district in which he resides, it protects him. And R. A'ha b. R. Aika said:

* This Mishna is concerning the second tithe which must be eaten inside of Jerusalem only.

This may be inferred from [Numb. xxxv. 28]: " Because in the city of his refuge shall he remain," *i.e.*, " his refuge " means which was his before he was exiled.

MISHNA *X.*: Similarly, if a murderer was exiled to the city of refuge and the townsmen like to honor him, he has to say to them: " I am a murderer "; and if they say it does not matter, he may accept. The exiled have to pay to the Levites rent for their dwellings. So R. Jehudah. R. Mair, however, said: They have not. If, after the high-priest's death, he returns to his city, he is returned to that office which he occupied before (*e.g.*, head of a college), according to R. Mair. R. Jehudah, however, maintains: He must not occupy the same.

GEMARA: Said R. Kahana: The Tanaim of the Mishna differ concerning the rent in the six cities in question only, for one explains the expression " unto you " to mean for protection only, and the other one explains it " unto all your necessities." However, on the addition of 42 cities all agree that they have to pay rent. Said Rabha to him: There cannot be any doubt in the explanation of " unto you," which certainly means to all your necessities, and therefore it is the contrary: they differ concerning the 42 cities; the one holds they were added only for protection, and the other holds they were added on equal terms with the six; but concerning the six themselves all agree that there was no rent.

" *He returns to his office.*" The rabbis taught: It reads [Lev. xxv. 41]: " And he shall return unto his own family, and unto the possessions of his father shall he return," *i.e.*, he may return only to his family, but not to the office which his parents occupied. So R. Jehudah. R. Mair, however, said he may return to the offices of his parents, and the same is the case with exile. And this is inferred from the pleonastic words, " shall he return." What does it mean, " the same is with exile "? As the following Boraitha: The murderer shall return to the land of his possession, *i.e.*, he may return only to the land, but not to the office of his parents. So R. Jehuda. R. Mair, however, maintains: He may also occupy the place of his parents, because of the analogy of expression " return," which is mentioned in both places, Ex. xxi. and Numb. xxv.

CHAPTER III.

WHO IS SUBJECT TO THE PUNISHMENT BY STRIPES.—THE DETAILS OF THE PROCEDURE REGARDING THE EXECUTION THEREOF.—WHAT CIRCUMSTANCES FREE THE CULPRIT THEREFROM.—THE RESPECTIVE DUTIES OF THE THREE JUDGES WHO MUST WITNESS THE EXECUTION.

MISHNA *I.*: To the following stripes apply: He who had intercourse with his own sister, with his sister of his father or his mother, or the sister of his wife, with the wife of his brother or his father's brother, or with a woman while menstruating. (To each of these crimes Korath—shortened life—applies, and according to this Mishna the human court has a right to punish them also with stripes.) The same is the case if a high-priest marries a widow; a common priest—a divorced or her who performed the ceremony of Halitzah; an Israelite—a bastard or a descendant of the Gibeonites; and the same is, if a daughter of an Israelite marries the just-mentioned persons. If a high-priest marries a widow who was previously divorced, he is to be beaten twice, because of two names ("widow" and "divorced"); if, however, a common priest marries a widow who has previously performed the ceremony of Halitzah, he is liable only for the violation of one negative. A high-priest who was unclean and partook of things belonging to the sanctuary or entered the sanctuary while unclean; and he who consumed illegal fat, blood, or meat left overnight from the sacrifice, or *piggul*,* or unclean meat, and also of such which was slaughtered and brought outside of the Temple; he who ate leaven on Passover, ate or labored on the Day of Atonement; who compounded oil similar to that of the Temple, or compounded the frankincense of the Temple, or anointed himself with the oil used in the Temple; who ate carcasses or animals preyed by beasts, or reptiles—to all of them stripes apply.

It applies also to him who partook of mixture, of first tithe

* *I. e.*, meat of a sacrifice illegally slaughtered.

of which the heave-offering was not separated as yet, of second tithe and eatables belonging to the sanctuary which were not redeemed yet. How much has one to partake of the mixture to make him liable? According to R. Simeon, whatsoever; while to the rabbis, not less than the size of an olive. Said R. Simeon to the sages: Do you not admit that if one consumed an ant—minute as it is—he is culpable? And he was answered: Because it is a creature in itself. Rejoined he: One grain of wheat is also complete as to its creation.

GEMARA: The Mishna treats of those crimes to which Korath applies, but not of those under the category of capital punishment. Hence it is in accordance with R. Aqiba of the following Boraitha: Crimes under the category of Korath, as well as under that of capital punishment, are also punished with stripes if they were so warned. So R. Ismael. R. Aqiba, however, maintains: Only that of Korath; because if they repent after the punishment with stripes, the heavenly court forgives them; but if they are under capital punishment the human court cannot forgive them even though they repent.* What is the reason of Ismael's theory? [Deut. xxviii. 59]: "Then will the Lord render peculiar thy plagues," etc. What the peculiarity is, is not stated; however, from [ibid. xxv. 2]: "The judge shall cause him to lie down" (the expression of which has a similarity), we understand that the peculiarity is stripes; and in [ibid. xxviii. 58] it reads: "If thou wilt not observe," etc.; hence the violation of all negative commands is punished by stripes. But if so, let them apply also to the violation transgression of a positive commandment? It reads: "If thou wilt *not* observe." R. Aqiba's reason is: concerning stripes the expression is "according to the degree of his *fault*," which means for one fault, but not for two faults, to which capital punishment applies.†

"*Things belonging to the sanctuary*," etc. It is correct, the transgression of entering the sanctuary of which the punishment as well as the warning is stated—viz.: the punishment [Numb. xix. 13]: "Hath defiled the tabernacle of the Lord; and that soul shall be cut off from Israel," and the warning [ibid. v. 3]:

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* The text contains also what Itz'hak said, repeated from Kherithoth,—the proper place.

† The text contains a long discussion about this subject, which is repeated in many places of the Talmud; here, however, this is very complicated and not important, and therefore omitted.

"That they defile not their camp"; but concerning eating sanctity, we find the punishment [Lev. vii. 20]: "The flesh . . . his uncleanness upon him . . . shall be cut off." But where is the warning to it? According to Resh Lakish from [ibid. xii. 4]: "Any thing hallowed shall she not touch"; and R. Jehanan said: Bardelah taught: From an analogy of expression "his uncleanness" here, and the same expression is found in the above quotation [Numb. xix.]. As there the punishment and the warning are stated, the same also applies to this case.

There is a Boraitha in accordance with Resh Lakish: "Hallowed shall she not touch" is a warning to the consumer. You say *consumer*, but perhaps it means literally (touching); therefore it reads further on, "into the sanctuary shall she not come," etc. Hence hallowed is compared to the sanctuary. As to the transgression of the sanctuary Korath applies, so also the warning concerning the hallowed must speak of a similar punishment (*i.e.*, consuming). But not of touching, to which Korath does not apply.

Rabba b. b. Hanna in the name of R. Jehanan said: To a negative command which is preceded by a positive one, stripes apply. There were people who questioned R. Johanan whether he said so, and he answered: Nay! Said Rabba: I swear that he said so, and it is also written and taught; "written" [Numb. v. 3]: "Shall ye send out . . . that they defile not their camps"; and "taught" in our Mishna: A defiled person who enters the sanctuary gets stripes. But why did R. Johanan retract his previous statement? Because the case of a seducer was difficult to him—namely, a seducer who had divorced his seduced wife, if he is a common Israelite, remarries her, but is not punished with stripes; if he, however, was a priest (who is forbidden to marry a divorced woman), he gets stripes and does not remarry. Now, as in this case, the negative command: "That he must not divorce her all his life" is succeeded by the positive command: "That he shall marry her," why, then, should not a common Israelite be punished with stripes for divorcing her? Said Rabha: The reason why he does not get stripes is that the positive "He shall remarry her" rests upon him all his life. (This is inferred from the words "all his days," which, if they were not explained that in case he has divorced her he shall remarry her, would be superfluous; with the explanation, however, the command, "He shall remarry her," is

attached to the negative " He shall not divorce her "; and there is a rule that to a negative command which is succeeded by a positive, no stripes apply.) And when Rabbin came from Palestine he said the same in the name of R. Johanan. Said Rabh Papa to Rabha: Why did R. Jehanan say above that he gets stripes? The negative in question is not similar to the negative of " muzzling " (which was said that it is placed there to teach that only to such which is not succeeded by a positive stripes apply)? Rejoined Rabh Papa: Should the negative become weaker because of the succeeding positive? Answered Rabha: According to your theory stripes should apply to each negative which is succeeded by a positive, which is not the case. Said Rabh Papa again: There it is different, as the positive usually comes to remove the negative (*i.e.*, one shall *not* do so, but if he did, *shall* he do so and so). But Rabha's explanation holds good only according to him who holds that the culprit does not get stripes unless he abolishes the succeeding positive command. (*I.e.*, the seducer who has divorced his wife may always say: " I will remarry her." Hence the positive is not abolished, and therefore he is not liable. But according to him who holds that only then is he free from stripes when he fulfils the command (*i.e.*, if he comes to the court, which commands him to marry her immediately, and if he does not listen he gets stripes). Hence, you cannot say that this positive rests upon all his life, and consequently it does not modify its preceding negative? Let us see: this objection applies only to Johanan's foregoing theory, and he said to the disciple who has repeated before the Boraitha concerning a positive which succeeds a negative: " Go and teach thus: Only when he has abolished the succeeding one, but not otherwise." R. Simeon b. Lakish, however, differs, and says: He is free from stripes only when he has fulfilled the succeeding one.

What is their point of difference? A doubtful warning—*e.g.*, in the case in question, if he was warned that he shall not divorce her, it was still doubtful whether after divorcing he will not remarry her; hence such a warning is not considered certain. But, nevertheless, according to R. Johanan it suffices, so that he may be punished; but according to Resh Lakish he is not. And both differ in the explanation of R. Jehudah's theory in the following Boraitha: It reads [Ex. xii. 10]: " And ye shall not let anything of it remain until morning; and that which remaineth of it until morning ye shall burn." We see, then,

that the verse comes to place a positive after a negative for the purpose that if one did leave he shall not be punished, and has only to burn it. Such is the decree of R. Jehudah. R. Johanan explains R. Jehudah's words thus: The reason why he does not get stripes is the succeeding positive, but if it were not he would be punished, although the warning was doubtful, as he could thereafter burn it. Resh Lakish, however, explains it thus: The reason why he does not get stripes is the succeeding, but if it were not he would get stripes, as to a negative command that does not contain manual labor, stripes do apply. But let us see: Resh Lakish cannot deny that such a warning was a doubtful one, and R. Johanan cannot deny that such a negative does not concern manual labor; what, then, is the use of their explanation? Both agree that, if not for the succeeding, stripes would apply; notwithstanding that there were both a doubtful warning and a positive of no manual labor. Resh Lakish shares the opinion of R. Jehudah of another Boraitha (Chulin 82, b.), in which R. Jehudah admits that a doubtful warning is not considered; and R. Johanan holds with R. Jehudah of the following: R. Idi b. Abin in the name of R. Amram and R. Itz'hak, quoting R. Johanan, said: R. Jehudah in the name of R. Jose the Galilean declared that for the violation of all the negatives of the Torah, if there be manual labor implied, the transgressor is punished with stripes, but not if mental, except in the cases of an oath, exchanging,* and cursing his neighbor by the Holy name. But if so, then, R. Johudah contradicts himself? Resh Lakish may say that there are two Tanaim who said in the name of R. Jehudah differently, and R. Jehanan may say that in the latter Boraitha R. Jehudah declared the theory of his master, but his own opinion he declared in the former Boraitha.

There is a Mishna: He who took the mother-bird with her children gets, according to R. Jehudah, stripes, but is not obliged to send away the mother-bird; and according to the sages, he sends away, but is not punished with stripes; as the rule is: for a negative which is conjoined with a positive there is no liability. Said R. Johanan: There is only one more case similar to this. And to the question of R. Elazar, What is it? he rejoined: Go and find out! He did so and found the following: "If a seducer has divorced," etc., v. above, p. 37. But this can be correct only with him who holds that he is released from

* Lev. xxvii., 10.

stripes after the fulfilment of the positive only. But according to him who holds that stripes do not apply unless the positive is abolished, such can be done only with the former mother-bird by killing her, as then the positive he " shall send her away " is abolished. But how can such be found in the case of the divorce in question; and should you say that he killed her, then he deserves capital punishment; and there is a rule that stripes do not apply to him who is to be executed? Said R. Simi of 'Huznah: " *E.g.*, he accepted betrothal money for her from some one else, hence she becomes the wife of another, and the positive " he shall remarry " is abolished. Said Rabh: Such cannot be considered; as in case she made him her messenger to accept the above, she may ignore the message; and, if he did it without asking her who gave him the right to such that it should be considered? Therefore said R. Simi of Nehardea: If, *e.g.*, he has made a vow publicly that he must not derive any benefit from her (and such a vow cannot be absolved), hence the positive is abolished and he is liable. Are there indeed no more similar cases to those by R. Johanan stated? Is there not robbery to which it reads, " Thou shalt not steal," and the positive " He shall return it," and also concerning a pledge to which the negative is, " Thou shalt not come to pledge," and the positive is " Thou shalt return the pledge at sunset "? And these two cases also can be explained in both ways: Fulfilled the positives or not, abolished the positives or not? With these cases it is different, for he has to pay, and there is a rule: He who pays does not get stripes. But is there not " Peah," the negative of which " thou shalt not cut . . . the corners " and the positive " unto the poor . . . leave " [Lev. xxiii. 22], which also may be explained in both ways as said above? Therefore we must say that R. Jehanan by his statement, There is only one similar case, meant " Peah " and not a seducer; since concerning the latter the Law dictates that even if there were a vow on the mind of the public * it can be absolved when such absolution is necessary to a meritorious act; as it happened with a children-teacher who struck too much the children and R. A'ha excommunicated him, Rabbina, however, returned him, because he could not find as good a teacher.

" *Carcasses preyed,*" etc. Said R. A'ha: He who neglects nature's duties when called, transgresses the negative " ye shall

* This will be explained in Tract Gittin.

not make your souls abominable" [Lev. xx. 25]. And R. Bibi b. Abayi said: He who drinks water from the horn of a barber transgresses the same.

"*Partook of mixture, first tithe,*" etc. R. Bibi in the name of Resh Lakish said: They differ only in case he take a grain of it, but as regards flour all agree that the size of an olive is needed. R. Jeremei in the name of same authority, however, said: As they differ in respect of wheat so they do in that of flour too. An objection was raised from our Mishna. R. Simeon said to them: Do you not agree if he ate an ant, etc., and to the answer of the rabbis "because it is a creature" he rejoined, A wheat grain is also complete in its creation, hence we see that they only differ in respect of the grain, but not in that of flour? R. Simeon meant to say thus: According to my opinion it is the same with flour, but to your theory, admit that if he ate a grain of it he shall be culpable, because of its completeness. The rabbis, however, maintain: We cannot compare a grain to a living creature. There is a Boraitha in accordance with R. Jeremei: R. Simeon said concerning stripes: Size does not count; it counts only concerning sacrifices.

MISHNA *II.*: Stripes also apply to the following: To him who partook of the first fruit before the ceremony of reading* was performed; of the sacrifices under the category of the most holy outside of the curtains, and of those under the category of a minor grade or of second tithe outside of the surrounding wall; and also to him who breaks a bone in the Paschal Lamb if it was a clean one. However, if he left from a fit one, or broke a bone of an unfit one, stripes do not apply.

To him who takes a mother-bird with her children from her coop according to R. Jehudah stripes apply, but he is not obliged to send the mother away, and according to the sages he must send her away and stripes do not apply, according to the rule: If a positive succeeds a negative, no stripes apply.

GEMARA: Said Rabba b. b. Hana in the name of R. Johanan: Our Mishna is in accordance with R. Aqiba, whose name is omitted, as it is one of the many anonymous Mishnayoth which bear his opinion without mentioning his name. The sages, however, maintain that concerning first fruits, their placing on the Temple is the main thing, but the ceremony of reading

* Deut. xxv, 15.

is no obstacle. But why not say that it is in accordance with R. Simeon, to whose opinion, also, most of the Mishnayoth were composed anonymously? This comes to teach that R. Aqiba is in this respect in accordance with R. Simeon. Which R. Simeon? Of the following Boraitha: It reads [Deut. xii. 17]: "And the heave-offering of thy hand," which means the first fruits; said R. Simeon: What does this come to teach us? If only that they must not be eaten outside the surrounding wall, it was not necessary at all, as this could be inferred from tithe, regarding which the law is more lenient, by drawing *a fortiori* conclusion: If one consumes tithe regarding which the law is lenient, outside of the wall, he gets stripes, so much the more when he consumes first fruits, concerning which case the law is more rigorous; therefore we must say that the verse means to include him who had consumed them before the ceremony of reading was performed. And "thy freewill-offering" [ibid., ibid.], means thanks and peace-offerings. R. Simeon, however, said: The verse does not mean them, as it was not necessary to teach that they must not consume outside of the wall, for the same reason that they could be inferred from the leniency in tithe by the same *a fortiori* reasoning. Therefore it means him who consumed of same sacrifices before their blood was sprinkled. And "first born" means literally. Said R. Simeon: If it meant so, it was not necessary either, as this could likewise be inferred by *a fortiori* reasoning from tithe; and if it means: who commanded them before blood-sprinkling, it was also not necessary, as it could be inferred from the above-mentioned sacrifices by *a fortiori* reasoning, as they are more lenient than the first born. Therefore we must say that it means to include him who consumes a first born even after its blood was sprinkled. "Thy herds or of thy flocks" means sin and transgression-offerings. R. Simeon, however, said: That if it meant them, it would not be necessary, as they could be inferred by *a fortiori* reasoning from tithe; thanks and peace-offerings, and first born, all of which are more lenient than that of sin and transgression. Therefore it means to include him who consumed from the latter even after sprinking outside of the curtain. "Nor any of thy vows" means burnt-offerings. Said R. Simeon: It would not be necessary, as they could be inferred by *a fortiori* reasoning from all those cases mentioned above, and therefore it means to include him who consumes from a burnt-offering after sprinkling even inside the curtains, that he get stripes. Said Rabha:

Every mother should bear a son like R. Simeon; although his theory can be objected to.*

It was taught: R. Gidel in the name of Rabh said: A stranger who had consumed sin- and transgression-offerings before their blood was sprinkled, is free from any punishment, because it reads [Ex. xxix. 33]: "And they shall eat those things wherewith the atonement was made to consecrate them, and to sanctify them; but a stranger shall not eat thereof, because they are holy." Now as the sprinkling of blood only atones, they can be considered holy only after the sprinkling was performed, but before this act they are not considered as yet holy; so that the negative "one shall not eat because they are holy" does not rest upon the consumer.

R. Elazar said in the name of Hosea: Concerning the first fruit, placing it in the Temple is the main thing, and not the ceremony of reading, as it is not considered the final act. In this case the following Tanaim differ [Deut. xxvi. 10]: "Thou shalt set it down before the Lord," *i.e.*, lift it up (before the Lord in all four directions). But perhaps it means literally, to place it? This is already written in verse (9). So R. Jehudah. R. Eliezer b. Jacob, however, maintains: This means literally (hence, this is the main act which completes the ceremony prescribed to first fruit); lifting up, however, he infers from [ibid., ibid. 4]: "And the priest shall take the basket out of thy hand," *i.e.*, that the priest shall lift it up towards all four directions. His reason is based on the analogy of expression "hand," which is also mentioned concerning peace-offering [Lev. vii. 30]: "His own hands shall bring it." And as there lifting up is needed by both the ripest and the owner of the offering, so also here the hands of both are needed. How so? The priest places his hand under those of the owner, and the two lift it up together.

Rabha b. Ada in the name of R. Itz'hak said: One is culpable for the first fruits immediately after they have seen the face of the Temple; and it is in accordance with the Tana of the following Boraitha: R. Eliezer said: Of the first fruit, a part of which was outside and a part inside, that of outside is considered common in all respects, while that of inside is considered holy in all respects. And R. Shesheth said: Only the placing is the main act of the ceremony and not the reading.

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* The text argues as to how the theory can be objected to by a very complicated process of reasoning, and from things entirely irrelevant to the subject, and therefore omitted.

"*Most holy*," etc. But why the repetition? It has been already stated with regard to second tithe and things of the sanctuary which were not as yet redeemed? Said R. Jose b. Hanina: The second part of the Mishna treats of a case when both were pure—and the man and the second tithes which were consumed outside of the wall, and the first part speaks of the case when both were defiled, and that he consumed them within the city. And whence do we know that one is culpable because of defilement? From the following Boraitha: R. Simeon said [Deut. xxvi. 14]: "Neither have I removed thereof while unclean,"* means neither when I was unclean and they were clean, nor *vice versa*. R. Eliezer said: Whence do we know that second tithe which became defiled may be redeemed even within Jerusalem! From [Deut. xiv. 24]: "Not able to carry it," which means also when it was not fit for eating, as the expression for carrying is "sheath" and in [Gen. xliii. 34], a similar expression is used for eatables. R. Bibbi in the name of R. Assi said: From the just-cited verse is to be also inferred that even one step outside the wall one may redeem the second tithe, if it is too heavy for him to carry it further. R. Hanina and R. Hosea, while sitting together propounded the following question: How is it if he was already within the gate of the wall in such a position that he was already inside but his load was outside—may he redeem it at that place or not? A certain old man then taught them in the name of R. Simeon b. Jo'hai: It reads [Deut. xiv. 24]: "Is too far from *thee*," means from the full extent of your capacity (and as he is already within the gate it cannot be considered far any longer, etc., and is not to be redeemed). R. Assi said in the name of R. Jehanan: The culpability for second tithe arises only after it has seen the face of the wall of Jerusalem, and the reason is [ibid. xii. 12]: "But before the Lord thy God must thou eat them," and (17): "Thou mayest not eat within thy gates"; hence, only at that time when the positive "before thy Lord must thou eat them" can be fulfilled, the negative: "Thou mayest not eat," etc., applies, but not otherwise.

MISHNA *III.*: He who makes a baldness in the hair of his head, or rounds it; he who destroys the corners of his beard, or makes incisions in his flesh for his dead, is liable. There is no difference whether he made one incision for five dead bodies or

* Leeser's translation does not correspond.

five incisions for one dead body, as in either case he is liable for five negatives. For rounding his hair he is also liable for two (one for one corner on one side, and another for the other corner on the other side; and for his beard five, for there are five corners.* R. Eliezer, however, maintains that if he took off the whole beard at one time he is culpable only for one. The culpability arises only, then, when he took it off with a razor. R. Eliezer, however, maintains that the same is the case if he took it off with snuffers or a scraper (an instrument with which the hairs are removed singly).

GEMARA: The rabbis taught [Lev. xxi. 5]: "They shall not make any baldness," lest one say that if one made several baldnesses in his head he is culpable only for one, therefore it reads, "any baldness" (*i.e.*, culpable for each one). And to what purpose is it written "upon their head"? Because [Deut. xiv. 1]: "Ye shall not cut yourselves, nor make any baldness between your eyes for the dead." Lest one say that he is culpable only when he did so between the eyes, therefore "their head" to include any place of the head. From here, however, we know that priests only are forbidden to do so, as they are subject to many commands which do not apply to a common Israelite; whence do we know that the same is the case with the latter? From the analogy of expression "baldness" in both verses; as in the first he is culpable for each baldness in the head as for that between the eyes, the same is the case with an Israëlite. And as in [Deut. xiv.] it says plainly "for the dead," so also in [Lev.] it means for the dead only.

What should be the size of the bald spot which would make him culpable? The size of a bean according to R. Jehanan in the name of R. Eliezer b. R. Simeon. R. Huna, however, said: Such a size which could be discerned. R. Jehudah b. 'Habibah said: In this three Tanaim differ. According to one it is the size of a bean, according to the other it is a discernible size, and the third, however, maintains that he is culpable even for two hairs. Some, however, say: Instead of two hairs, it must be of the size of a lentil.

"*He who rounds*," etc. The rabbis taught [Lev. xix. 27]: "Ye shall not cut round the corners of your head" means the end of his head, *i.e.*, who makes his temple as hairless as the

* For an illustration of the five corners, see Rashi, as we do not deem it necessary to illustrate them for the English reader.

spot back of his ears to the nape of his neck. A disciple taught before R. Hisda: Both are culpable, he who rounds, and the rounded one. To which R. Hisda answered: Should he who eats dates from a sieve be culpable? Your Boraitha is in accordance with R. Jehudah, who holds that to a negative which does not contain manual labor, stripes apply (with whom the Halakha does not prevail). Rabha, however, says: It speaks that he himself has rounded his hair, which case all agree that he is culpable. And R. Ashi said: Even if he only assists the one who rounds his hair.

"*And he who destroys the corners of his beard.*" The rabbis taught: "The corners of his beard," means the end of it; and what is meant by the end? The Shibboleth (sheaves).

"*Incisions,*" etc. The rabbis taught [Lev. xix. 28]: "For the dead . . . any incision," lest one say that he made such because of the fall of his house or because the ship sank, therefore "for the dead," to teach that he is culpable only if he did so for a dead. And whence do we know that if he made five incisions for one dead he is culpable for each one? From "any incision" which makes him culpable for each of them. R. Jose said: Whence do we know that if he made one incision for five dead he is culpable for five? From the expression "l'Nefesh" * (soul) *i.e.*, he is culpable for each soul. But does not the same passage exclude the case when he did so for "his house" or "ship," etc.?

R. Jose holds that "cut" in Deut. iv. and incision is one and the same, and there also reads "for the dead," hence this also may be inferred.

Samuel said: If one made an incision with an instrument he is culpable. An objection was raised from the following: Incision and cutting is one and the same (but incision means with the hand and cutting with an instrument), hence for an incision with an instrument he should not be culpable? Samuel holds in this respect with R. Jose that there is no difference at all.

A disciple taught before R. Jehanan: For dead he is culpable at all courts whether by hand or instrument, but if for an idol, by an instrument he is culpable, but not by hand; as it reads [I Kings, xviii. 28]: "And cut themselves after their custom with knives."

"*Culpable only for one,*" because he holds that he transgressed only one negative command.

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* The term "for dead" is "l'Nefesh," which means for a dead soul.

"*With a razor.*" The rabbis taught [Lev. xxi. 5]: "The corner of their beard shall they not shave off," *i.e.*, with a razor. But lest one say even with scissors he shall be culpable, therefore it reads [ibid. xix.], "thou shalt not destroy." But if so let him be culpable for destroying it even with snuffers or scrapers? therefore the expression "shave off," and destroying by shaving is brought about by a razor.

"*R. Eliezer,*" etc. From whatever opinion he start: if he cares for the analogy of expression, then it is with a razor only; and if he does not, let him be culpable even if he did it with scissors? He cares for the analogy, but to his opinion snuffers and scrapers are equivalent to a razor.

MISHNA *IV.*: The culpability for etching-in [Lev. xix. 28] arises only when he has done both, wrote and etched-in with dye or any other indelible thing, but to one of them no culpability attaches. R. Simeon b. Jehudah in the name of R. Simeon said: He is not culpable unless he etched-in the holy name; as the above-cited verse reads, "and any etched-in writing shall you not fix on yourselves: I am the Lord."

GEMARA: Said R. Aha b. Rabha to R. Ashi: Does it mean unless he etch-in the words "I am the Lord"? And he answered, Nay! It is as Bar Kapara taught: "He is not culpable unless he writes the name of an idol, as the words "I am the Lord" mean *I* am the Lord, but not another one.

R. Malkhiya in the name of R. Ada b. Ahaba said: One is forbidden to put ashes upon his wound in the flesh, because it looks like a tattooing. [Said R. Papa: Throughout both Mishna and Boraitha, the name Malkhiya when mentioned is Malkhiyah, but in Halakhas it is Malkhiyoo]. R. Ashi, however, said: It does not matter, as the wound shows there is no tattooing.

MISHNA *V.*: A Nazarite who was drinking wine the whole day, is culpable only for one negative. If, however, he was warned, Do not drink, do not drink! he is culpable for each time he does not listen to. The same is the case if he had defiled himself by touching dead the whole day, he is culpable for one only; but if he was warned, You must not do so! etc., he is culpable for each one. The same is also the case with shaving himself. If he did so the whole day without warning he is culpable for one only, if with warning, for each time warned. A similar case this: If one was dressed with Kelaim, he is culpable for the whole day only once; but if he was told not to dress himself with it, and he undresses and redresses, he is liable for

each time. There is an instance that one may plough only one bed and shall be culpable for eight negatives—viz: If he ploughs with an ox and an ass both of which were from the sanctuary, if there was Kelaim in a vineyard, if that occurs in the Sabbatical year and on a legal holiday, and, finally, if he is a priest or a Nazarite in a legally unclean place. Hanania b. 'Hakhinai said: It can be added to that " who at the same time was dressed with Kelaim." And he was answered: This is not under the category of ploughing. Rejoined he: Does, then, a Nazarite belong to this category?

GEMARA: Said R. Bibi in the name of Rabh Assi: Not only when he undresses and redresses himself entirely, but even when he put his sleeve in and out. And R. Aha b. R. Aika has shown that he puts in the sleeve and puts it out. But R. Ashi maintains that it means the time during which he could put in and out.

"*Ploughing one bed*," etc. Said R. Yanai: At a meeting there was voted and resolved that he who protects Kelaim is liable to stripes. Said R. Jehanan to him: Is this not explained in our Mishna, which mentions that there was Kelaim in the vineyard? And if one were not culpable for protection what would have the ploughing to do with it? You must, then, say that while ploughing he protects it, and the Mishna makes him culpable. Rejoined R. Yanai: If I had not uncovered for you the broken clay pot, you would surely not have the pearl which was lying under it. Said Resh Lakish to R. Jehanan: Would not such a great man praise your statement? I would say that our Mishna is in accordance with R. Aqiba, who holds that one is liable even for keeping it. Said Ula to R. Na'hman: After it was decided that protecting is the same transgression as sowing, let him also be culpable for sowing on a legal holiday? And he answered: It was left out by the Tana of the Mishna. Rejoined he (Ula): It numbers eight, consequently nothing was left. Said Rabha: The different kinds of labor in one article are considered with respect to Sabbath only, but not to holidays. And Ula said: (I also think) so it is.

MISHNA *VI.*: The number of stripes is forty less one, as it reads [Deut. xxv. 2, 3]: " By a number, forty," *i.e.*, near forty. R. Jehudah, however, said: Forty in full, and the fortieth is between his shoulders. The examination (by the physicians of the court) as to the number of stripes he can receive and remain alive, must be such that can be equally divided by three. If

the decision was that he is able to receive forty, but after receiving a part of them they saw he cannot stand any more, he is free. However, if the decision was, he can stand eighteen only, and after he was stricken they saw he is able to receive more, he is nevertheless free.

GEMARA: The reason of the statement of the Mishna is the expression "number," which is before the word "forty," and is to be interpreted "about" forty; for if it meant forty in full, it would state forty in number. Said Rabha: How foolish are those who arise before the Holy Scrolls, but do not do so before a great man. We see that in the Holy Scrolls it reads forty, and the rabbis came and reduced one.

"*R. Jehudah said,*" etc. What is his reason? Said R. Itz'hak [Zech. xiii. 6]: "What are these wounds between thy hands," etc. The rabbis, however, maintain that this passage speaks of school-children.

"*After he was stricken,*" etc. Is that so? Does not a Boraitha state that if the first decision of the physicians was that he can receive forty and thereafter they decided again that he can not, or the first decision was for eighteen, and the second states that he is able to receive forty, he is free. (Hence we see that even if he was not stricken but only examined, he is free.) Said R. Shesheth: This presents no difficulty. Our Mishna speaks of the decision rendered on the very same day on which he ought to be beaten, and by acting accordingly it was found that they erred; hence in the first instance he is freed because he cannot stand, and in the second, because he was already disgraced and freed we do not care to disgrace him again. The Boraitha, however, speaks that the examination was several days before, and when the day of punishment came, the decision was changed because of his health.

MISHNA *VII.*: If one commits a sin to which two negatives apply, if the decision was rendered once for both negatives, he is punished once only, but if for one negative, he is punished again after he has recovered.

GEMARA: Is there not a Boraitha that one must not be appraised for two negatives? Said R. Shesheth: It presents no difficulty. Our Mishna speaks, if he was appraised for forty-one, *i.e.*, for two negatives, and because it cannot be divided into three, their appraisement is annulled, and he receives only thirty-nine for both; and the Boraitha speaks of the case when he was appraised to receive forty-two for two negatives, and as

it can be divided into three, the three over the thirty-nine are counted for the second negative. Hence he is beaten once, and after recovery is to be appraised again and beaten accordingly.

MISHNA *VIII.*: How is the punishment with stripes to be performed? He ties his both hands to the pillar, and the messenger of the court takes hold of his clothes, without care whether they tear or disjoin, until he uncovers the breast. The stone on which the messenger is to stand is placed behind him, upon which he stands with a strap of calf leather compounded of two, which, folded again, constitutes four, with two small stripes attached to it.

The size of its handle was a span, and of the same size was the width of it, and the top of it reaches his belly. He strikes him one-third in front and two-thirds on the back. He is not beaten while standing nor sitting, but while bending; as it reads [Deut. xxv. 2]: "The judge shall cause him to lie down," and the striker strikes him with one hand with all his force. And the reader reads from [ibid. xxviii. 58–59]: "If thou wilt not. . . . Then will the Lord render peculiar thy plagues," etc., to the end of the verse. And if the striker has not finished yet, he begins [ibid. xxix. 8]: "Keep ye therefore," etc., and finishes with [Psalm lxxviii. 38]: "But he, being merciful, forgave the iniquity." And if the act was not finished as yet, he returns to the beginning. If it happens that he dies under the messenger's hand, the latter is free. If, however, he added one stripe which caused death, he is exiled. If while beaten he collapsed and became incontinent of urine or excrement, he is freed. R. Jehudah maintains: A male, when incontinent of feces; and a female, of urine.

GEMARA: What is the reason that he shall be freed if he collapsed, etc.? His having been already disgraced.

R. Shesheth said in the name of R. Eliezer b. Azaria: Whence do we know that the strap must be of calf leather? Because immediately after "forty stripes" it reads, "thou shalt muzzle the ox." (See appendix.)

"*Two small stripes,*" etc. In a Boraitha it is written from ass leather, and it is as a certain Galilean preached in the presence of R. Hisda [Isaiah, i. 3]: "The ox knoweth his owner and the ass his master's crib: Israel doth not," etc. The Holy One, blessed be He, said: "He that knoweth the master's crib shall take revenge from him who does not want to know it."

"*One-third in front,*" etc. Whence is this deduced? Said

R. Kahana: From "to be beaten before his face according to the degree of his fault," which means for one fault in the front and for two in the back.

"*The striker strikes him with one hand,*" etc. The rabbis taught: The court appoints messengers who are weak in force but strong in wisdom. R. Jehudah, however, said: Even *vice versa*. Said Rabha: It seems to me that R. Jehudah is correct, because it reads "not more"; now if the messenger were weak in wisdom he must be warned, but if strong in wisdom, why warning? The rabbis, however, maintain the contrary, that warning is of consequence only to him who is learned to be careful. There is a Boraitha: When he lifts up, he does it with both hands, but strikes with one hand, so that the strokes shall become weaker.

"*And the reader reads,*" etc. The rabbis taught: The chief of the judges reads; the second numbers, and the third says, strike! When the stripes are many he prolongs, and when less he shortens. But does not the Mishna state "he returns to the beginning of the passage"? It is better that the reading should be finished with the stripes; but if it was not, he returns. The rabbis taught: It reads [Deut. xxv. 3]: "Too many stripes"; but lest one say that one or two does not matter? Therefore "not more"—not even one. But if so, to what purpose "too many stripes"? To teach that if it happen so, even the stripes which were given rightly are to be considered too many (in force).

"*Collapsed,*" etc. The rabbis taught: A male as well as a female "in feces," but not "in urine." So R. Mair. R. Jehuda said: A male "in feces" and a female "in urine." The sages, however, maintain: There is no difference between male and female, and between feces and urine; at all events the beaten is to be freed. But is there not a Boraitha: R. Jehudah said: Male and female in feces? He meant to say that in such a case all agree, but concerning incontinence of urine there is a difference of opinion.

Samuel said: If after he has been tied, he succeeds to run away from the court, he is free. An objection was raised from the following: Collapsing frees one whether it happen at the first stroke or the second, but if the strap broke he is free only if it happened at the second, but not at the first. Now, why should this not be equivalent to running away, which frees even before the first strike? This is no objection, when he runs away

he could not be beaten (and as he was already disgraced, he is not taken to be disgraced again), but here he is still present.

The rabbis taught: If it was concluded by the examination that he will collapse in case he is beaten, he is to be freed; but if the conclusion is that he will collapse after having been beaten, it does not free him. Furthermore, if it happen that he collapse before he was taken to be beaten, it does not prevent after recovery; because it reads [Deut. xxv. 2, 3]: "And to be beaten . . . and . . . thus rendered vile," but not rendered vile before beaten.

MISHNA *IX.*: All who are liable to Korath, if beaten, are freed from it, as it reads [ibid., ibid. 3]: "Thy brother rendered vile," *i.e.*, as soon as he was rendered vile, he is thy brother. So R. Hananye b. Gamaliel; the same also said: If one loses his soul for one sin, so much the more his soul should be saved because of one meritorious act! Said R. Simeon: This may be inferred from the very place which treats of Korath [Lev. xviii. 29]: "Even the souls that commit them shall be cut off," and [ibid., ibid. 5]: "Ordinances, which, if a man do, he shall live in them." As the whole portion is of negative commands, it is to be inferred that if one only abstains from committing a crime, he is rewarded as if he acted meritoriously. R. Simeon b. Rabbi said: It reads [Deut. xii. 23]: "Be firm so as not to eat the blood; for the blood is the life." Now, for rejecting blood which is disgusting to one, he is rewarded; from money and women, to which the nature of man is inclined, so much the more should he be rewarded if he separates himself; and not only he, but all his descendants to the end of the generations, may be rewarded. R. Hanania b. Akasiha said: The Holy One, blessed be He, wanted to make Israel blissful and therefore he multiplied to them his commands in the Torah, as it reads [Isaiah, xlii. 21]: "The Lord willed (to do this) for the sake of his righteousness: (therefore) he magnifieth the law, and maketh it honorable."

GEMARA: Said R. Jehanan: The colleagues of R. 'Hananye differ with him (as according to them stripes do not substitute Korath). Said R. Ada b. A'haba in the name of Rabh: The Halakha nevertheless prevails with R. Hananye. Said R. Joseph: Who, then, ascended to heaven, returned, saying that the Halakha prevails with him? Said Abayi to him: According to you, that which was said by R. Jehoshua b. Levi, "three things were done by the human court, and the heavenly court

agreed with it," is also to be questioned: who ascended to heaven and convinced himself that it was so? but such is inferred from the Scripture; well, the same is here, too. What are the three things in question? The following: The reading of the Book of Esther on Purim, greeting with the Holy Name, and placing the tithe belonging to the Levites in the treasury of the sanctuary. The first (Book of Esther) from [Esther, ix. 27]: "The Jews took it upon themselves as a duty and accepted," means, they took upon themselves in their human court, and it was accepted in the heavenly court. "Greeting" from [Ruth, ii. 4]: "And he said unto the reapers, the Lord be with you," and also [Judges, vi. 12]: "The Lord is with thee." To what purpose is the second quotation? Lest one say that Boas did it according to his own opinion and without the admission by heaven, therefore the other quotation which was said by an angel. And concerning tithe from [Malachi, iii. 10]: "Bring ye all the tithes into the storehouse, that there may be provision in my house, and prove me but herewith, saith the Lord of hosts, if I will not open for you the windows of heaven, and pour out for you a blessing, until it be more than enough."

R. Elazar said: At three places the Holy Spirit appeared: At the court of Shem, of the prophet Samuel, and in the court of King Solomon. At the court of Shem [Gen. xxxviii. 26]: "And Judah acknowledged them and said, She hath been more righteous than I." And whence did he know it? Perhaps as he was with her, so was some one else? Therefore a heavenly voice was heard: I have decided that so is it to be. In the court of Samuel [I Samuel, xii. 5]: "And he* answered, He is witness." He? *they* ought to be! Hence a heavenly voice was heard, I witness that so it is. And [I Kings, iii. 27]: "The king then answered and said, Give her the living child and do not slay it: she is its mother." And whence do we know it is so; perhaps she nevertheless deceived him? Hence the last words, "she is its mother," were said by a heavenly voice. Said Rabha: If it were inferred from the Scripture only, all of them could be objected to, but this is known by tradition.

R. Simlayi lectured: Six hundred and thirteen commands were said to Moses; three hundred and sixty-five of them negatives, corresponding to the number of days in a year counting according to sunrise; and two hundred and forty-eight positives,

* Leeser's translation does not correspond.

corresponding to the members of a man's body. Said R. Hamnunah: Where is there an allusion thereto in the Scripture? [Deut. xxxiii. 4]: "The Torah which Moses commanded us." The letters of the word Torah number six hundred and eleven (Tav is 400; Vov, 6; Reish, 200, and Hei, 5), and the two first commandments, however, of the ten, we ourselves have heard from Heaven. However, David came and reduced their number to eleven [Psalm xv. 2–5]: "He that walketh uprightly" means Abraham, to whom such an expression was said in [Gen. xvii. 1]: "Worketh righteously" means Aba A'helqiah (see Tainith, p. 66–68). "Speaketh the truth" as, *e.g.*, R. Saphra. "Uttereth no calumny," *i.e.*, Jacob, our father. "That doth no evil to his neighbor," *i.e.*, he who takes care not to compete with his neighbor's business. "No reproach on his fellow man" means him who approaches his relatives. "Despicable is despised" means the king, who carried his father's bones on a bed of ropes. "Honoreth those who fear the Lord" means King Jehoshofath, who used to arise from his throne on seeing a scholar, kissed him, and called him, my father, my master, etc. "That sweareth to his own injury, and changeth not," *i.e.*, as R. Jehanan said: If one says I will fast until I will come home, it is to be considered. "Money for interest," *i.e.*, him who does not accept usury even from an idolator. "Taketh no bribe" means, *e.g.*, R. Ismael b. Jose, who does not accept even his own goods from his gardener for the purpose that he shall try his case. "He that doth these things shall not be moved to eternity." [When R. Gamaliel used to come to this passage, he used to weep, saying: Who performed *all* this shall not be moved, but one of them does not suffice (see Sanhedrin, p. 237).]

Isaiah, then came and reduced them (the 613 commands) to six [xxxiii. 15]: "He that (*a*) walketh in righteousness, (*b*) speaketh uprightly, (*c*) despiseth the gain of oppressions, (*d*) shaketh his hands against taking hold of bribes, (*e*) stoppeth his ears against hearing of blood, and (*f*) shutteth his eyes against looking on evil." (*a*) Means Abraham, of whom it reads [Gen. xviii. 19]: "For I know him, that he will command," etc. (*b*) Means him who does not anger his colleague in public. (*c*) Means R. Ishmael b. Elisha. (*d*) R. Ishmael b. Jose. (*e*) R. Eliezar b. Simeon, and (*f*) means as R. Hiya b. Aba said: Who does not look on women washing near the bank of the river. (See last gate, p. 137.)

Michah came and reduced them to three [vi. 8]: "He hath told thee, O man, what is good; and what the Lord doth require of thee: (nothing) but to do justice, and to love kindness, and to walk humbly with thy God." "To do justice" means judgment; "love kindness" bestowing of favors; and "walk humbly," providing for burial of the dead and marriage of poor maidens.

Isaiah (the second) again reduced them to two [lvi. 1]: "Thus hath said the Lord, Keep ye justice and do equity."

Amos then came and reduced them to one [v. 4]: "Seek ye for me, and ye shall live."

R. Na'hman b. Itz'hak opposed: Perhaps he means seek for me to perform everything that is written in the Law? Therefore Habakkuk was the one who reduced them to one [ii. 4]: "The righteous should live with his faith." Said R. Jose b. Hanina: Four decrees Moses has decreed upon Israel, and four prophets came and abolished them. Moses said [Deut. xxxiii. 28]: "And then dwelt Israel in safety, alone," etc. Amos abolished it [vii. 5]: "How should Jacob be able to endure," then immediately in (6) "The Lord bethought . . . this shall not be." Moses said [Deut. xxviii. 65]: "And among these nations shalt thou find no ease." Jeremiah abolished it, saying [xxxi. 2]: "He is going to give rest to Israel."* Moses said [Ex. xxxiv. 7]: "Visiting the iniquity of the fathers upon the children." Ezekiel abolished it by saying [xviii. 4]: "The soul which sinneth, that alone shall die." Moses said [Lev. xxvi. 38]: "And ye shall be lost among the nations." Isaiah abolished it by saying [xxvii. 13]: "The great cornet shall be blown," etc. Said Rabh, I am nevertheless afraid of the passage "ye shall be lost among the nations," and of the end of same, "the land of your enemies shall consume you." Marzutrah opposed, relating the following: It happened with Rabban Gamaliel, R. Elazar b. Azariah, R. Jehoshua, and R. Aqiba, who were on the road, and heard the noise of the city of Rome at Patlus, a distance of 120 miles, and they began to weep; but R. Aqiba smiled. And to the question, Why are you smiling, he returned the question, Why do you weep; rejoined they: Those idolators who bow themselves to images and smoke frankincense to the idols are resting in peace, the contrary is with us, that even our holy Temple is burned by fire,

* Leeser's translation does not correspond.

and we should not weep? Rejoined he: For the same reason I am smiling. If such is done to them who act against His will so much the more will be done in the future to them who act in accordance with His will. It happened again that the same were going to Jerusalem, when they arrived to the Mount Zerphim, they tore their garments; and when they approached the Mount of the Temple and saw a fox running from the place where the Holy of Holies had been situated, they began to weep; but R. Aqiba smiled. To their question why he smiled, he answered: It reads [Isaiah, viii. 2]: "Witnesses, Uriyah the priest, and Zecharyahu," etc. Why is Uriyah conjoined with Zecharyahu? Was not the former at the first Temple and the latter at the second? It was because the passage bases the prophecy of Zecharyahu upon the prophecy of Uriyah. Uriyah said [Micha iii. 12]: "Therefore for your sake shall Zion be ploughed up as a field," etc. Zechariah said [viii. 4]: "Again shall there sit old men and old women in the streets of Jerusalem," etc. Until the prophecy of Uriyah was not fulfilled I feared lest the prophecy of Zechariah will come to be realized but now since I see that Uriyah's prophecy is fulfilled I am sure that Zechariah's prophecy will also be fulfilled in the near future. Upon this version they said to him: Aqiba, thou hast condoled us, thou hast condoled us!

APPENDIX TO PAGE 50.

R. Shesheth said in the name of R. Eliezer b. Azariah: He who disgraces the festivals is regarded as if he worshipped idols, as it reads [Exod. xxxiv. 17]: "Thou shall not make unto thyself any molten gods," and immediately follows the verse "The feast," etc. The same said again in the name of the said authority: He who speaks evil of his neighbor, he who listens to such evil-speaking, finally he who bears false testimony deserves to be thrown to the dogs, as [ibid. xxii. 30] "to the dogs shall ye cast it," is immediately followed by [xxiii. 1] "Ye shall not spread (thisso) false report," which should be read also thassi, *i.e.*, ye shall not excite one against the other.

TRACT SHEBUOTH (OATHS).

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SYNOPSIS OF SUBJECTS

OF

TRACT SHEBUOTH (OATHS).

CHAPTER I.

MISHNA *I.* There are two kinds of oaths which are subdivided into four. The he-goat makes it pending. How is this to be understood? If it does not atone, what is the use of making it pending? It means, *i.e*, if the transgressor dies then it may be considered that if he dies before he becomes aware of it, this sin is not reckoned to him any more. Said Rabha to him: "In case he dies, the death itself completes the atonement; it is the he-goat that saves him from chastisement before he becomes aware by making it pending. All the above-mentioned persons are atoned for by the exported he-goats for all other transgressions without any difference, etc. Such is the custom of the divine attribute of justice, that the righteous atone for the wicked and not that the wicked atone for another wicked, . 1-16

CHAPTER II.

MISHNA *I.* The cognition of uncleanness is of two kinds subdivided into four. The courtyard was sanctified with the remains of a meal-offering only, in order to make it equal to the City of Jerusalem itself, etc. The orchestra of the thanks-offering consisted of violins, fifes, trumpets on every corner as well as on every elevated stone in Jerusalem, and used to play, etc. It was taught, R. Huna says: "All the details in the Mishna were essential in the construction, etc. If one enters a leprous house backwards, although all his body was already in the house except his nose, he remains clean. And ye shall separate the children of Israel from their uncleanness," whence you derive the warning that the children of Israel should separate themselves from their wives near the period of menstruation, etc. If there were two paths one of which was unclean (but it was not certain which one), and one passed through one of them entering, etc. . . 17-26

CHAPTER III.

MISHNA *I.* TO *VII.* There are two kinds of oaths subdivided into four. I swear that I will eat, or I will not eat, etc. Where do we find that one must bring an offering for mere talk, as this one does talk and brings an offering. What is Issor mentioned in the Torah? If one says: "I take upon myself not to eat meat," etc. Vain (Shakve) and false (Shekker) are identical. Stripes apply to all negatives of the Torah implying manual labor, but not to those without manual labor, excepting, however, an oath. There is a moth, which is but a minimum in size, and yet one is liable for

consuming it. I swear that I will not eat, and thereafter eats and drinks, he is guilty but once. I will drink neither wine, oil nor honey, and then drinks, he is guilty for each severally. If he swore not to eat and thereafter ate carcasses or illegal cattle, reptiles and vermin, he is guilty. R. Simeon declares him free. The reason of him who holds that one is liable for an inclusion is that he compares it to an additional prohibition. It is immaterial whether the things sworn off concern himself or others, whether they are or are not of some essential nature. One is guilty only for an oath made with reference to the future, etc. I swear that I know something to testify for you, and it is found hereafter that he knows nothing, etc. There is a rule that, if to something that was included in the general a new law be applied, only by the new one must guide one's self, etc. To exclude compulsion what could illustrate this? As it happened to R. Kahana and R. Assi after the lectures at Rabh's college, etc. Suppose one swear not to eat this bread, and then he is in danger if he does not eat it, how is it, etc.? If one swears to ignore some commandment and does not carry out his oath, etc. If one says I swear not to eat *this* bread, in case I eat the other, etc. Which is false swearing? If one swears that something is different from what it is known by everybody to be. The provisions regarding uttered swearing apply to males, females, to kindred, non-kindred, etc. 27-46

CHAPTER IV.

MISHNA *I.* TO *VI.* The witness-oath applies to men but not to women, to unrelated but not to kindred, etc. If a scholar was aware of a case, but it was a humiliation to him to go to that particular court he may remain at home, etc., concerning civil cases only. The many things inferred from Exod. xxiii. 7. Keep thyself far from a false speech. How does a witness-oath come about? If some one said to two, etc. If there were two parties of witnesses and both denied successively, etc. There is also a case concerning a witness who refuses to testify to the death of a husband, etc. If one of them denies and the other confesses, etc. I adjure you that you come and bear me witness, that I have in the possession of so and so, etc. I adjure you to testify that so and so has spread abroad an evil name on my daughter, etc. We swear that we know nothing for you, while in reality they do know, etc. I adjure you, I impose upon you, I bind you (by oath) so they are guilty, etc. If one writes Aleph Lamed (the first letters from Eloim), etc. It must not be erased, etc. All the divine names found in the Torah in connection with Abraham are holy, etc. Amen embraces oath, acceptance and confidence, etc. Nay means oath and yea means also an oath, etc. R. Kama, while sitting before R. Jehudah, repeated the Mishna in its own language, and he said to him: "Change the language and use it in the third person, ... 46-65

CHAPTER V.

MISHNA *I.* TO *VI.* The depository oath concerns men and women non-kindred and kindred, those fit to testify and those unfit, etc. What is the law, when one has intentionally made a depository oath in spite of a warning, is he liable to a sin-offering or not? If the depository claims that the

deposit has been stolen from him, swears, but thereafter confesses, etc. If one denies money when there are witnesses, he is subject to an oath, but is free from such if there is a document. How is it if five persons claim the four articles and he says to one of them I swear that thou hast not with me a deposit, etc., and not thou and not thou, etc. 66-74

CHAPTER VI.

MISHNA *I.* TO *III.* In the case of an oath before court, the claim must amount to two silver, and the confession to one peruta, etc. If one requires movables and real estate, and the other admits movables but denies real estate or *vice versa,* he is free, etc. One must stand when taking the oath; a scholar, however, may do it while sitting. An oath taken by one before the court must be uttered in a language he understands, and the court must say to him the following introduction. Be aware that the whole world was trembling when the Lord spake on the Mount Sinai: "Thou shalt not bear the name of the Lord thy God falsely." I have with you a gold dinar in gold. Nay you have with me only a silver dinar, he is liable. If one was about to claim wheat, and the defendant hastened to confess barley, etc. What is the difference between a biblical and a rabbinical oath. I have a mana with you. Yea, you shall not return it to me without the presence of witnesses, etc. In another case one demanded a hundred zuz, etc. A borrower said to the lender: "You are trusted so long as you will say that I have not paid you"; thereafter he paid him in the presence of witnesses, etc. One does not swear to the following: To slaves written documents, etc. One swears but to things capable of being measured, weighed and counted. How so? If one lends to his neighbor on a pledge, and the pledge got lost, etc. If one lends to his neighbor 1,000 zuz, and pledges them the handle of a scythe only, etc. 75-93

CHAPTER VII.

MISHNA *I.* All those who are subject to a biblical oath swear and do not pay, etc. Give me change for a dinar. Give the dinar. I have given it to you already, etc. You have hired me for two zuz to repair something, while the employer says that he hired him only for one zuz, etc. If witnesses saw one concealing utensils under his garments when coming out from a house, and he claims that he had bought them, etc. The oath returns to its place—the Mount Sinai. If there were two parties of witnesses contradicting each other, each party may appear and testify for itself. Let the master conjoin with us in nullifying the statement of Rabh and Samuel. It once happened that *B*, who had borrowed money of *A* through a surety and on a document died, etc. 93-105

CHAPTER VIII.

MISHNA *I.* There are four kinds of bailees, gratuitous, on hire, borrower and hirer, etc. This is the rule: "Whoever tends to commutate, by his oath liability to liability, unliability to unability, or unability to liability is free, etc. . . . . Appendix, 106-108

TRACT SHEBUOTH (OATHS).

CHAPTER I.

RULES AND REGULATIONS CONCERNING OATHS TO WHICH IS ATTACHED THE LIABILITY OF A SIN-OFFERING OR STRIPES.—THE CONDITIONS OF LIABILITY AS DETERMINED BY THE TIME OF REMEMBERING OR FORGETTING THE OATH.—WHICH OATHS ARE OR ARE NOT ATONED FOR BY PRIVATE AND CONGREGATIONAL SACRIFICES AND ALSO BY THE DAY OF ATONEMENT.—ILLUSTRATIONS OF THE TWO KINDS OF OATHS SUBDIVIDED INTO FOUR.

MISHNA *I.*: There are two kinds of oaths which are subdivided into four. The cognition of uncleanness is of two kinds subdivided into four. The carrying in and out on the Sabbath day is of two kinds subdivided into four, and also aspects of leprosy are in kind two and subdivided into four.

If one was originally cognizant of his being unclean, and (after he had consumed of the holy food or entered the sanctuary) presently became aware of this fact anew (that he committed this or that while being unclean), but was not conscious of it during the act, so he is obliged to bring a rich or poor offering. If, however, he had the knowledge at the start but not at the end of the act, so the he-goat, the blood of which is interiorly to be sprinkled on the day of atonement as well as the day itself, will effect a delay of the punishment until he gets to know his transgression, and then he is to bring the above-mentioned offering.

If there was no antecedent knowledge, but he became conscious of it after, his expiation is effected by the he-goat sacrificed exteriorly on the day of atonement as well as that day itself; for it reads: "Except the sin-offering of the atonement," *i.e.*, what this atones for the other one does, too; just as the exterior he-goat propitiates only where there was *one* knowing, so propitiates the interior one, only where *one* knowing took

place. But where there was no knowledge either before or after, the propitiation is effected by the he-goats sacrificed on (the) holidays and new-moon days. So R. Jehudah; R. Simeon, however, says: The he-goats of the holidays atone, but not those of the new-moon days, which propitiate only him who ate something polluted while being himself clean. R. Mair says: All goat sacrifices are equivalent as to propitiating (the) pollution of the holy temple and its holy sacrifice. R. Simeon would say: The he-goats of the new-moon days propitiate for the clean who ate something polluted; those of the holidays, for cases where there was no knowing either before or after; and that of the day of atonement, for cases where there is no antecedent but a subsequent knowing. And when he was asked: May one of them be sacrificed instead of the other? he answered: Aye! Whereupon they retorted: Since they are not all equivalent as to their capacity of propitiating, how can they substitute one another? To which he replied: They all possess this in common that they propitiate for polluting the holy temple and its offerings. R. Simeon b. Jehudah, however, said in his name: The he-goats of the new-moon days propitiate for a clean one who has eaten defiled food; those of the holidays possess a greater power, as they propitiate for the clean who has eaten defiled, and for the case of polluting where there was neither antecedent nor subsequent knowledge; those of the day of atonement are superior to the others in that they propitiate not only for the clean one who has received defiled food and for the case of neither antecedent nor subsequent knowledge, but also for the case where there is no antecedent but a subsequent knowledge. Hereupon he was questioned: May the one he-goat be offered as substitute for the other? And he answered: Yea. To which the others rejoined: It may be admitted that the goats of the day of atonement be offered on the new-moon days, but how can the reverse take place, *i.e.*, that the goats of the new-moon days propitiate for what they are not capable of doing? And his answer was: They all have this in common that they propitiate defilement of the holy temple and of its holy viands.

For wanton pollution of the holy temple and of its holy offerings the interior he-goat of the day of atonement as well as this day itself atones for all other transgressions of the Law both lenient and rigorous, intentional and unintentional, the foreknown and unforeknown, the positive and negative commandments, those entailing koreth or judicial death-punishment, for

all these the exported goat atones. Herein are equal Israelites, priests, and the anointed high-priest. What difference does, then, exist between Israelite and priest and anointed high-priest? That the blood of the bullock propitiates for the pollution of the sanctuary and of the holy viands by the priests. R. Simeon, however, says: Even as the blood of the goat prepared in the interior propitiates for the Israelites, so does the blood of the bullock for the priest; even as the confession of sins over the kid to be exported propitiates for the Israelite, so does the confession of sins over the bullock propitiate for the priest.

GEMARA: Let us see in accordance with whom is our Mishna's statement. It is not in accordance with R. Ismael and also not with R. Aqiba, as according to the former, one is not liable to a sin-offering, only if the oath concerns the future (this is explained in Chap. III. of this tract), and according to the latter, one is liable only for forgetting that the object is defiled, but not if he forgot that this is the sanctuary? The Mishna can be explained in accordance with both. With R. Ismael, as he may say that the expression of the Mishna, two subdivided into four, means that for some of them one is liable, and for some of them one is not. The same can be said concerning R. Aqiba. But how can R. Aqiba's statement be explained so? Does not the Mishna include leprosy in which there is not a single case for which one is not liable to a sin-offering, consequently all the cases mentioned in the Mishna are of the same kind? We must, therefore, say that it is in accordance with R. Ismael only, and to the question that R. Ismael does not make one liable for the past, it may be answered that he frees him from the liability of a sin-offering only, but not from the punishment of stripes, as he holds that stripes apply even to such a negative command in which there is no manual labor, and this is, as Rabha explained elsewhere (Chap. III.), that such is R. Ismael's opinion. But if so, then R. Johanan's statements would contradict each other—namely, at one place he declared that the Halakha prevails according to an anonymous Mishna (our Mishna, which is anonymous, and is in accordance with R. Ismael), and elsewhere it was thought if one says: I swear to eat this loaf of bread to-day, the day, however, has passed and he did not eat it, according to both Johanan and Resh Lakish stripes do not apply. However, their reasons are different. The reason of the former is that there is no manual act, and the reason of the latter is that the warning to this trans-

gression could not be of a certain, but of a doubtful kind (as perhaps he will still keep to his oath), hence, we see that R. Johanan's decision is that there are no stripes to a non-manual act, though contrary to the decision of the Mishna? R. Johanan's above decision is in accordance with his rule, for it is in accordance with another anonymous Mishna, as follows: "I swear that I will not eat this loaf, I swear again that I will not eat it," and thereafter he did eat, he is liable only for the oath first which had made this bread illegal to him. (The second oath, however, is considered but an oath to keep his word according to the law, and such an oath is not subject to punishment.) This is an utterance oath, to whose intentional transgression stripes apply, and to an unintentional, a rich or poor offering. Now, the expression of the Mishna, *this* is, means that only to such a transgression which is of a past nature stripes apply, but not to a transgression of a future nature, *e.g.*, I will eat, etc., hence this Mishna, which is also anonymous, is in accordance with R. Johanan's opinion.

But let us see; both Mishnaioth are anonymous, why, then, should R. Johanan choose the last one and not the first? According to this question, you also may ask: Why did Rabbi (editor of the Mishna) insert such two contradictory Mishnaioth? You must say, then, that formerly, Rabbi's opinion was that a negative command of non-manual act is under the category of stripes, but after reconsideration he came to the conclusion that it is not, and therefore inserted the last, but did not care to strike out the first.

Let us see; after all, you have explained the Mishna in accordance with R. Ismael and as concerning stripes, but does not the Mishna mention four kinds of leprosy, to all of which stripes by no means apply? Nay; there is a case to which stripes do apply—viz.: when cuts off the leprosy (before the priest saw it), and this is in accordance with R. Abin in the name of R. Elai, who said that wherever the Scripture uses one of these expressions, "Take heed to thyself, lest *ahl*" (the negative particle of the imperative mood) is a negative commandment. But does not the Mishna mention the violation of Sabbath to which also stripes do not apply, for, it is under the category of capital punishment, to which stripes cannot apply? R. Ismael holds that even to such, stripes do apply, and therefore the Mishna is explained in accordance with him.

R. Joseph, however, says: Our Mishna is in accordance with

Rabi's own opinion, and he composed it in accordance with different Tanaim, concerning knowing and not knowing, he took R. Ismael's opinion, and concerning oaths he took R. Aqiba's.

Said R. Ashi: I have related this explanation before R. Kahana, and he said to me: Do not say that Rabi inserted the above Mishna in accordance with the above Tanaim, and he himself did not approve of them, for in reality, in this Mishna he explains his own opinion, as we find he did so in the following: Whence do we know that one is not culpable for a transgression of which he was aware both at the start and at the end, but unaware during the act? From [Lev. v. 2–3]: "Escaped his recollection," two times repeated. So R. Aqiba. Rabbi, however, maintains it to be unnecessary, as from the expression "escaped" it is self-evident that he *was* once aware of it, and further on it reads, "he becometh aware," *i.e.*, twice aware, once at the start and again at the end. But should you ask to what purpose "escaped" is written twice (I say) once to make one liable for the forgetting the defilement, and the second for the forgetting the sanctuary.

(Says the Gemara): From this we find that Rabbi has declared his own opinion concerning known and unknown. Where is such to be found concerning oaths? It is common sense. Why, then, does R. Aqiba make one liable for the transgression of a past oath? Because he considers *extensions* and *limitations* (mentioned in the Scripture), and the same did also Rabbi, as we have learned in the following Boraitha. Rabbi said: Our first-born male may be redeemed with everything but documents; the rabbis, however, maintain that slaves and real estate are also excluded (and the reasons are there given thus: Rabbi considers extensions and limitations, and the rabbis consider generals and particulars in the Scripture).

Said Rabina to Amamar: Does indeed Rabbi consider extensions, etc., and not generals, etc.? In the following Boraitha we find the reverse; it reads [Deut. xv. 17]: "Then shalt thou take an awl," but whence do we know that one may do it with a thorn, prick, borer, needle or pencil? Therefore it reads: "Shalt thou take," *i.e.*, everything that is to be taken in hand for this purpose. So R. Jose b. Jehudah. Rabbi, however, maintains that since an awl is of metal, so must every instrument for this purpose be of metal. And to the question, what is the point of their difference, we answered that Rabbi considers *generals* and *particulars* (awl is of metal, etc.), and the R. Jose con-

siders *extensions*, etc., hence, we see that Rabbi considers *generals* and not *extensions?* Yea; in all other cases Rabbi considers *generals*, but here he considers also *extensions* for the reason explained in the following: The disciples of R. Ismael taught [Lev. xi. 9]. In the "water" is mentioned twice; this is not to be taken as a *general* and a *particular*, but as an *extension* and a *limitation* (this paragraph will be explained in the following tracts). But do not the rabbis hold the above theory? Said Rabina: In the west it was said in every place in the Scripture where the expression of two *generals* are to be found near each other, one may put a *particular* between them, and derive the law of *general* and *particular*.

But now that we come to the conclusion that Rabbi considers extensions, etc., there will remain a difficulty concerning oaths; we must, therefore, say that Rabbi inserted in this Mishna the opinion of R. Aqiba, with which he himself does not agree.

The text said: From the expression "escaped" it is self-evident that he was aware. Why is it self-evident? We find elsewhere the same expression, and no awareness is therein implied. Said Abayi: Rabbi holds that elementary knowledge is considered, *i.e.*, the knowledge one learns in school when yet a child (*e.g.*, he learned that he who toucheth an unclean thing becomes defiled). Said R. Papa to him: According to this theory, how can we find a case in which he was unaware before? And he answered: It may be found with him who was captured by heathens while he was still an infant, and was brought up by them.*

"*Originally cognisant.*" The rabbis taught: Whence do we know that the verse speaks of the defilement of the temple and its holy offerings? This may be learned from an inference. The Scripture warns: One shall not make himself unclean, and he who does so shall be punished, and is liable to a sin-offering (for unintentional), and both the warning and the punishment speak about the temple and its holiness. The same is the case when it makes him liable to a sin-offering, it is only in case of entering the temple. But perhaps it means heave-offering, to which there is also warning and punishment? Nay; we do not find a transgression which is under the category of capital punish-

* The text repeats here what is already translated in tract Sabbath about carrying on Sabbath which is two divided into four, and also about leprosy, therefore we omit it.

ment, to which the liability of a sin-offering attaches, when done unintentionally. However, such is the case with a special offering; but let him bring a rich and poor offering which is to be brought for utterance or witness oath? It reads [Lev. v. 3]: *Boh*, literally *in it** to exclude all other things. But perhaps it means to exclude the sanctuary to which a rich or poor offering does not suffice, and only a special is needed? Said Rabha: I apply to Rabbi the saying, " He draws water from very deep wells," as we have learned in the following Boraitha. Rabbi said: I read in the Scripture (in concern with a rich or poor offering) a beast; to what purpose, then, is also written a cow? (Is it not included in the term beast?) It is for an analogy of expressions. Here it reads, " an unclean cattle," and further on [ibid. vii. 22] the very same expression, which speaks particularly about the defilement of the holy offerings; hence, as here it speaks of the holy offerings, so does the former expression, too. But this concerns the holy offerings only; whence do we know that the same is the case with the sanctuary itself? From [ibid. xii. 4]: " Anything hallow shall she not touch, and into the sanctuary," etc.; we see, then, that the sanctuary is compared to its holiness.

The sages of Nahardea said in the name of Rabha: There is mentioned in relation to peace-offerings three times, defilement. And why? One for a general, one for a particular, and one for the expression defilement with regard to a rich or poor offering, but it does not explain the kind of a defilement; and not knowing what it means, we assumed it to mean the defilement of holiness; but now as Rabbi above inferred this from another place, we apply this defilement to the sanctuary itself.

" *Originally cognisant . . . became aware anew.*" The rabbis taught [Lev. xvi. 16]: " Shall make an atonement for the holy place because of the uncleanness," etc. In this case there can be three kinds of defilement: by idolatry, licentiousness, and bloodshed, for we find, in regard to idolatry [ibid. xx. 3]: " In order to defile my sanctuary"; concerning licentiousness [ibid. xviii. 30]: " Ye shall not defile yourselves therewith"; finally, concerning bloodshed [Numb. xxxv. 34]: " Ye shall not render unclean." Lest one say that for all these three defilements the he-goat atones, therefore [Lev. xvi. 16]: " *Mitumoth*," literally, from the uncleanness of the children of Israel, but not all of

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* Leaser's translation does not correspond.

them; and as we saw elsewhere that the Scripture has separated the defilement of the sanctuary and its holiness from all other defilements, we must say that here, also, it means the sanctuary, etc. So R. Jehudah. R. Simeon, however, maintains that this theory is inferred from the very same place, as it reads, "he shall make an atonement for the holy place from the uncleanness (*mitumoth*)," consequently it means from the uncleanness of the holy place. But lest one say that for every defilement which happens to be in the sanctuary the he-goat atones, therefore, further on, "because in all their transgressions, in all their sins," it compares intentional transgressions to sin. As to the former, offerings do not apply, so, also, does it not to sins, which are not under the category of offerings (and which of them are under this category? That of which he was aware at the start and at the end, but forgot during the act). And whence do we know that in a case of which he was aware at the start, but not at the end, that the same he-goat makes it pending? From "in all their sin," *i.e.*, all sins which are under the category of a sin-offering.

The master said: There are three kinds of defilement, etc. Let us see how was the case; *e.g.*, idolatry, if intentional, is under capital punishment; if unintentional, then the transgressor is liable to a sin-offering. The same is the case with licentiousness: for intentional, capital punishment, and unintentional, a sin-offering; and the same with bloodshed: intentional, by capital punishment; unintentional is punished with exile. It may be said that in the first two it means that it was done intentionally but without warning; and concerning bloodshed, if committed unintentionally by such a person who cannot be exiled, *e.g.*, a high-priest of whom it is said in tract Sanhedrin that he cannot be exiled.

The master said: The he-goat makes it pending. How is this to be understood? If it does not atone, what is the use of making it pending? Said R. Zera: It means, *i.e.*, if the transgressor dies then it may be considered that if he dies before he becomes aware of it, this sin is not reckoned to him any more. Said Rabha to him: In case he dies, the death itself completes the atonement; it is the he-goat that saves him from chastisement before he becomes aware by making it pending.

"*If he had no antecedent knowledge . . . by the he-goat sacrifice exteriorly*," etc. Let us see; both he-goats are considered equal. Why, then, should the inner he-goat not atone also for

the things the exterior one atones for? And the difference would be that if the exterior happened not to be sacrificed at all, the interior would do also his atoning? It reads [Exod. xxx. 10]: "Upon its horns once," *i.e.*, it atones only one atonement, but not two. Why should not the exterior atone for itself and for the interior also, and the difference would be that a defilement happened during the time between the sacrifice of the interior and that of the exterior? The verse says "once in a year," *i.e.*, once, and not twice in a year. But according to R. Ismael, who said that to such a case offerings apply, what then does the exterior he-goat atone for? For such a case in which there was no knowledge at either start or the end, but does not for such atone the festival and the new-moon goats? He holds with R. Mair, who said that the atonement of all the goats are equivalent, as they atone for defilements in the sanctuary and its holiness, and the equality of the interior and exterior goats lies that both do not atone for other transgressions outside of the sanctuary with its holiness.

"*So R. Jehudah.*" Said Jehudah in the name of Samuel: The reason why R. Jehudah of the Mishna so maintains is [Numb. xxviii. 15]: "And one he-goat for a sin-offering unto the Lord," *i.e.*, for such a sin of which none is aware but the Lord, this he-goat atones.

The schoolmen propounded a question: Does R. Jehudah speak only of such a case which could never be known, but not such which must come to knowledge at the end (*e.g.*, if there were witnesses who saw him entering the sanctuary while he was defiled, of which they are bound to inform him thereafter) and which is atoned by the exterior he-goat on the day of atonement; or even of such a case which so long as it is not known to him at the present time, is considered that nobody knows of it but the Lord? Come and hear the following: For such a case in which there was no knowledge at the start and the end, and also for such a transgression that finally the transgressor must be informed of, the festival and new-moon he-goats atone; such is the decree of R. Jehudah.

"*But not of the new-moon.*" Said R. Elazar in the name of R. Oshia: The reason of R. Simeon's theory is thus [Lev. x. 17]: "And he had given it to you to bear the iniquity," etc., which applies to the new-moon he-goat, and by an analogy of the expression "iniquity," which is also found concerning the golden plate on the forehead of the high-priest [Exod. xxviii.

38], it may be said that as the latter atones only for bodily defilement, so also the he-goat in question does. And lest one say that as the golden plate of the high-priest atones only for such things which come on the altar, so also should the he-goat in question; it reads here, "the iniquity of the congregation,"* but not of the things of the altar.

"*R. Meier says: All goat-sacrifices are equivalent*," etc. Said R. Hama b. R. Hanina: The reason of R. Meier's theory is that in some places it is written "the he-goat," and in others "*and* the he-goat" (the letter *vahve*, prefixed to he-goat, means and), and this intends to signify all the he-goats with regard to their atoning power. But this is correct only where the *vahve is* written, but how is it concerning the day of Pentecost and the day of atonement where the word he-goat is not written with a *vahve?* Therefore said R. Jonah, it reads [Numb. xxix. 39]: "These shall ye prepare unto the Lord on your appointed festivals," whence all the festivals on which a he-goat is sacrificed are equal to one another. But is not there the he-goat on new-moon, which is not a festival? In reality the new-moon is also called festival, as Aabayi said elsewhere: The month of Thamuz in the year when the temple was destroyed, was a full month of thirty days, as it reads [Lament. i. 15]: "He hath called an assembly (*moëd*)," which *moëd* means literally festival (and the thirtieth day of the month is new-moon).†

R. Johanan said: R. Mair admits that the interior he-goat does not atone for what all other he-goats do, nor do the latter atone for what it does; it does not atone for what the others do, because it is written "once," which signifies that it atones but for one sin and not for two; on the other hand, they do not atone for what it does, as it reads "once a year," which signifies that such an atonement takes place only once a year. There is a Boraitha in support to this: For the case where there was no knowledge at either start or end, and for that where there was none at the start but at the end, also for that where a clean one has consumed defiled food, the he-goats of the festivals, of the new-moons, and the exterior he-goat of the day of atonement atone; so R. Meier. We see here that he left out the interior he-goat and also what it atones for.

* The text discusses again, why should not the golden plate atone also for that which the he-goat does, and *vice versa?* and as it is almost the same which was said above, we omit it.

† See Taanith, p. 86.

"*R. Simeon used to say: He-goats of the new-moons,*" etc. It is correct that the new-moon's he-goat does not atone for what the festival's do, as it reads "a sin," which means one sin, but not two, but why should not that of the festivals atone for what the new-moon's does? Because of the expression "its," which signifies its iniquity but not that of another. Furthermore, the festival's (goats) do not atone for what that of the day of atonement does, because it reads "once a year," which means such be only once; nor does that of the day of atonement atone for what the festivals' do, because it is written "once," which means it atones once but not twice; and although this is written but concerning the interior he-goat, yet there is another place where it is called the sin-offering of the day of atonement in which the interior is included; and it has been already said above that in this respect the exterior is equalled to the interior. And R. Simeon b. Jehudah, who said that the he-goat of the festivals does atone for what the new-moon's atones, does not hold the extension "it" mentioned above.

Ula said in the name of R. Johanan: Daily offerings which were not necessary for the congregation any more, may be redeemed, although they have no blemish; Rabba sat down and repeated this Halakha. Said R. 'Hisda to him: Who will listen to you and to R. Johanan your master, for, whereto vanished their sanctity? And his answer was: Where, indeed, do you think it went to? Is not there a Mishna (Shekalim, 4, e): The sanctification of the incense on hand was then transferred to money, etc., and there was no question raised as to where the sanctity went to? Whereupon R. 'Hisda rejoined: Incense is incomparable, as it was not sanctified in a holy vessel, but by the money paid. (See Appendix.)

"*For intentional defiling,*" etc. Whence is this deduced? From what the rabbis taught [Lev. xvi. 16]: "And he shall make an atonement for the holy place, because of the uncleanness of the children of Israel, and because of their transgressions in all their sins." Transgressions (*P'shaim*) imply intention, as [II Kings, iii. 7]: "King of Moab hath rebelled (*Pasha*) against me," and [ibid. viii. 22]: "Then did Libnah revolt"; on the other hand, sin implies unintention, as [Lev. iv. 7]: "If any person do sin (*Techtah*) through ignorance."

"*For other transgressions, etc. . . . lenient and rigorous.*" Let us see; does not lenient mean positive and negative commandments, while rigorous, such to which *korath* and capital

punishment apply? And again, "known" means intentional, unknown, erroneous; why then the repetition? Said R. Jehudah: It intends to say that for all other transgressions found in the Torah, be they lenient or rigorous, be they committed intentionally or unintentionally and in latter case with knowledge or ignorance thereof, atonement is effected by the he-goat. And lenient are the positive and negative commandments, and the rigorous are those to which Korath and capital punishment apply. But again, how can there be a transgression of a positive commandment? If the transgressor has not repented [Prov. xxi. 27]: "The sacrifice of the wicked is an abomination"; and if he has, why the specific on the day of atonement, when any day is good, as the Boraitha teaches: When one transgresses a positive commandment and repents it, he is atoned for before yet leaving the place. Hereupon said R. Zera: It speaks of no repentance, and our Mishna is in accordance with Rabbi, who holds that the day of atonement atones for each of the transgressions found in the Torah, regardless of antecedent repentance; except him who shakes off the yoke, explains the Torah not according to its real meaning and destroys the covenant in his flesh; as for him, the day of atonement atones, provided he first repented, otherwise it does not. Rabbi bases this, his opinion, on [Numb. xv. 31]: "Because the word of the Lord hath he despised," which means, he who has shaken off the yoke of, and misinterpreted, the Torah, "and His commandments hath he broken," which means, he who has destroyed the covenant in his flesh [ibid. 30]: "Hicoreth Ticoreth," meaning literally "cut off, shall be cut off," *i.e.*, cut off before, shall be cut off after, the day of atonement; but lest one say the same is the case with him who has repented, it reads "the iniquity is therein," whence it is to infer that only in case the iniquity is upon him (but not after the repentance when the iniquity is gone). The rabbis, however, explain this verse thus: "Cut off" in this world and "shall be cut off" in the world to come; and as to the iniquity, it means if he die upon repenting, the death completes the atonement.

But how can this Mishna be in accordance with Rabbi, when the second part, "There is no difference between the Israelite, priest and anointed high-priest," is only the view of R. Jehudah; hence, the first part should, too, rather be in accordance with the latter? Said R. Joseph: The whole Mishna is the opinion of Rabbi who agrees with R. Jehudah concerning the

latter part only. Said Abayi to him: Does the master mean to say that Rabbi agrees with R. Jehudah, while R. Jehudah does not agree with Rabbi, or he does agree, and that you say the former is only because it is customary that the disciple agrees with his master? And he answered: I am very specific in this expression; Rabbi upholds R. Jehudah, while R. Jehudah does not agree with him with regard to the first part of the Boraitha; as we have learned in the following Boraitha: Lest one say that the day of atonement atones for both repenters and non-repenters, there is an analogy in the following. A sin and trespass offerings atone as well as the day of atonement, and as the former atones for but them who repent, so does also the day of atonement; but lest one say there is a considerable difference between them, as the said offerings atone only for sinning by error, while the day of atonement atones even for an intentional act, whence it might atone also for non-repenters, therefore it reads [Lev. xxiii. 27]: "But . . . it," which excludes non-repenters. Now, this Boraitha is found in Siphrah, and according to tradition all the anonymous Boraithas of Siphrah are in accordance with R. Jehudah.*

"*No difference between an Israelite*," etc. Does not the Mishna contradict itself by saying here there is no difference, etc., and immediately hereafter asking what is the difference between, etc.? Said R. Jehudah: It is to be explained thus, all the above-mentioned persons are atoned for by the exported he-goats for all other transgressions without any difference; a difference between person and person arises, however, with regard to the bullock that atones only for the priests in the case of defilement of the temple and its holiness; and this is only in accordance with R. Jehudah of the following Boraitha; it reads [Lev. xvi. 31]: "And he shall make an atonement for the *sanctum sanctissimum*" means the innermost holy chamber; "and for the tabernacle of the congregation" means the whole temple; "and for the altar," literally; "shall he make an atonement" means the courtyards of the temple; "and also for the priests," literally; "and for all the people of the congregation" means Israelite; "shall he make the atonement" means the Levites; hence, they all are equally atoned for by the exported he-goat for all transgressions but that of defilement. Such is the

* There is a contradiction in the Boraithas of Siphrah, which will be treated of in Tract Krithoth.

dictum of R. Jehudah; R. Simeon, however, maintains that as the blood of the interior he-goat atones for the defilement of the temple by the Israelites, so does the blood of the bullock atone for the defilement of the temple by the priests; likewise, as the confession of sins over the exported he-goat atones for all other transgressions by Israelites, so does the confession over the bullock atone for the priests in all other transgressions. And as to the above deduction that all are equally atoned for, it means that they are equal, in as much as the category of atonement is concerned.

Who is the Tana of the following Boraitha? It reads [ibid. xvi. 15]: "He shall kill the goat of the sin-offering of the people," which means that which does not atone for the priests; but what does atone for them? Aaron's own bullock, because it is assigned to atone for his house also. And lest one say that they should not be atoned for even thereby, as the phrase "of him" is used concerning Aaron's bullock, then the priests who must be atoned for would remain without all atonement, we say it is better they should be atoned for by Aaron's bullock, which, atoning for all the house of Aaron, is *eo facto* no longer "of him" individually, than to be atoned for by the interior he-goat, which does not include any other thing. As to the possible objection that "his house" is meant to exclude other priests, there is a verse [Ps. cxxxv. 19, 20]: "O house of Aaron, bless the Lord; O house of Levi, . . . ye that fear the Lord, bless the Lord," and this includes all the priesthood. There is a Boraitha relating that the disciples of R. Ismael taught: Such is the custom of the divine attribute of justice that the righteous atone for the wicked and not that the wicked atone for another wicked.

CHAPTER II.

RULES AND REGULATIONS CONCERNING THE COGNITION OF DEFILEMENT; ITS TWO KINDS, SUBDIVIDED INTO FOUR, AND THEIR ILLUSTRATIONS.—THE CEREMONIAL ACCOMPANYING THE CONSECRATION OF THE EXTENSIONS BUILT IN THE COURT-YARD OF THE TEMPLE, AND IN JERUSALEM IN GENERAL.—ILLUSTRATIONS OF POSITIVE COMMANDMENTS THAT DO OR DO NOT ENTAIL LIABILITY.

MISHNA *I.*: The cognition of uncleanness is of two kinds subdivided into four—viz.: when one after having become unclean perceives it and then forgets all about it, knowing, however, that what he eats is holy; or when he was ignorant of the fact that the food is holy, being, however, aware of his uncleanness; or, finally, when both facts having escaped his memory he ate from the holy food without being cognizant thereof, but learning it after he had eaten, he is to bring a rich or poor offering. If he became unclean and knew it, forgot it afterward, but was fully conscious that he was in the sanctuary or he forgot that it was the sanctuary but knew his uncleanness; or, both facts having escaped his cognition, he enters the sanctuary without knowing it to be such and learns this fact only after he has gone out, he is to bring a foregoing offering.

It is immaterial whether the unclean one enters the courtyard (of the temple) or its extension, since extensions are added to both city and courtyard (of the temple) only in the presence of a king, prophet, *Urim* and *Tumim*, and of the grand Sanhedrim consisting of seventy-one, two thanks-offerings and the chorus; the whole court of justice steps forth, followed by the two thanks-offerings and then all Israel; the inner bread is consumed, the outer one is burnt. But whatever has not been constructed in this manner, does not entail guilt upon him who being unclean enters it.

If one having become unclean in the courtyard of the temple forgot it, remembering, however, that he is in the holy temple; or forgot that he is in the temple but was aware of his uncleanness; or, both facts having escaped his cognition, he made a

bow or was lingering there for an interval taken up by the making of a bow, or went out by the longer way, he is guilty; but if by the short way, he is not guilty. This is a positive command concerning the holy temple, for disobeying of which one is not guilty.

And which is the positive command concerning menstruation that entails guilt? If one being in relation with a clean woman is told by her: I have just become unclean, and thereupon immediately interrupts his relation with her, he is guilty, for separation from her affords him as much pleasure as his coming to her. R. Eliezar says: One is guilty for forgetting the cause of his uncleanness to have been a reptile, but is not guilty for forgetting (that he is in) the holy temple. R. Aquiba says (it reads): If he has become ignorant of being unclean, whence it follows that he is guilty of obliviousness as regards uncleanness but not as regards the holy temple. R. Ismael says: The phrase "it will escape his memory" is repeated twice to declare one guilty in both cases: for forgetting his uncleanness as well as for forgetting the sanctuary.

GEMARA: Said R. Papa to Abayi: It states "two divided into four," whereas it ought to be "into six"—viz.: the cognition of defilement of the holy food, and of the sanctuary, in each case antecedent and subsequent. Answered Abayi: According to your theory there ought to be eight subdivisions, as cognition of defilement may be accompanied with ignorance of holy food and of the sanctuary. Rejoined R. Papa: In reality there are eight; the Mishna, however, does not count the first four, which are not at all found in the Scripture (*i.e.*, the Scripture finds one liable, *e.g.*, for eating illegal fat irrespective of his antecedent cognition or ignorance of its being illegal; he must then bring a sin-offering after becoming aware of the fact, hence, of the preceding cognition there is no mention in the Scripture).

"*It is immaterial . . . enters the courtyard,*" etc. Whence is this ceremony attending the extension of courtyards deduced? Said R. Shimi b. Hyye, from [Exod. xxv. 9]: "In accordance with all that I show thee, the pattern of the tabernacle, and the pattern of all the instruments thereof, even so shall ye make it," which last phrase means for the future generations (otherwise this phrase would be superfluous).*

"*When two thanks-offerings,*" etc. There is a Boraitha that

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* Rabha's objection thereto is already translated in Sanhedrim.

the two thanks-offerings mean their bread and not flesh. Whence is this deduced? Said R. 'Hisda, from [Neh. xii. 31]: "And I have prepared two large thanks-offerings." Now, what signifies the attribute "large"? Shall we assume that it means literally, then it should read bullocks! Or should it indicate merely that of their kind they were the large ones; now, does it make a difference before heaven? Does not a Boraitha state: Concerning a cattle burnt-offering it reads [Lev. i. 13]: "Sweet savor unto the Lord"; the same expression concerns a fowl burnt-offering [ibid., ibid. 17]; likewise concerning a meal offering the same term is used [ibid. ii. 2], which is intended to teach that before heaven all offerings, liberal as well as poor, are equal, provided they are offered to gratify the heavenly Father? It remains, therefore, to assume that the attribute, large, means simply the greater part of the thanks-offerings, *i.e.*, the leaven bread, as there is a Mishna teaching that the thanks-offering was five Jerusalem saahs large, which are equal to six country saahs, making two eiphas each of three saahs, altogether twenty tens, ten of which were leaven and the other ten of matzah. The matzah, however, consisted of three kinds: cakes, wafers, and of what was sodden (hence, the leaven cakes were threefold those of the matzah).

Rami b. 'Hama said: The courtyard was sanctified with the remains of a meal-offering only, in order to make it equal to the City of Jerusalem itself—viz.: as the rule about the things eatable within the city renders them invalid if carried outside the city, so also with things eatable within the courtyard, they become invalid out side of this yard (and a meal-offering was to be eaten only within the courtyard). Now, lest one say that as the city is to be sanctified with the leaven cakes of the thanks-offering, so also the remains of the meal offering sanctifying the courtyard be of leaven, the answer would be that there can be no meal offering of leaven, since it reads [Lev. vi. 10]: "It shall not be baked leaven, as their portion," etc., which Resh Lakish interprets to mean that not even a portion thereof be baked leaven; hence, the above supposition is impossible. But again, why not sanctify with the two breads of Pentecost which are leaven? Nay; this cannot be admitted either; because how can this be carried out? Supposing the courtyard to be built before Pentecost, then the breads becoming holy only upon the slaughtering of the two lambs, are not yet capable of sanctifying; furthermore, the sanctification must take place on the day of

completing the building, hence, the sanctification on the holiday is out of question; nor can it be supposed that the temple be finished on the holiday, since there is a rule that the temple must not violate holidays; finally, to leave the two breads for the morrow of the holiday is not feasible, for they would become invalid in being left over night. But why not leave the finishing until sunset, when the lambs are slaughtered and the breads become holy, so that the sanctification could be carried out? There is a tradition that building the temple must not take place in the night time; as Abayi said: We know that the building of the temple must not be completed in the night, from [Numb. ix. 15]: "And on *the day* that tabernacle," etc., hence *on the day*, but not on the night.

"*By the chorus*," etc. The rabbis taught: The orchestra of the thanks-offering consisted of violins, fifes, trumpets on every corner as well as on every elevated stone in Jerusalem and used to play [Psalm xxx. 2]: "I will extol thee, O Lord, for thou hast lifted me," etc., and also [ibid., 91]. Some call this latter song *Negaim* (plagues) because of verse [ibid., 10] in which it reads, "Nor shall any plague," etc; others call it *Pegaim*, because of verse [ibid., 7]: "There shall fall at thy side a thousand." They used to sing this song from verse 1 to 10 inclusive, and also the whole of Chap. III. of Psalms.

R. Jehoshua b. Levi used to say all the verses mentioned above before going to bed. But this seems hardly credible, as he himself said somewhere that none should cure one's self with the verses of the Torah. The answer is that protecting and curing are two different things, and he prohibited to say such verses over a wound.*

"*Followed by the two thanks-offerings*," etc. Shall we assume that the thanks-offerings follow the court, when we read [Ne'hem. xii. 31, 32]: "Two thanks-offerings . . . after them walked Hosha'yah," etc.? Nay; it means thus: They were all walking, the court being behind the offerings. In what order were the two offerings carried? R. 'Hyye and R. Simeon b. Rabbi differ concerning this: according to one they were one opposite the other, while according to the other they were placed one behind the other. According to the former opinion the one offering that was to be sacrificed on the inner altar was brought near the wall, while according to the latter opinion the one that

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* See Sanhedrim.

was near to the people of the court was sacrificed. R. Johanan, however, said: It was left to the prophet to decide which of the offerings was to be burnt and which to be eaten.

"*But whatever has not been constructed*," etc. It was taught: R. Huna says: *All* the details were essential in the construction, while R. Na'hman said: Whatever was not constructed with one of them, etc. R. Huna bases his theory on the fact that the first sanctification sanctified for the future, too, while Ezra's sanctification was but a kind of memorial. On the other hand R. Na'hman holds that the first sanctification was confined only to the present and Ezra sanctified for his time although there were no Urim and Tumim. Rabha objected to R. Na'hman from our Mishna which plainly states, "in this manner," *i.e.*, with all the details specified there; whereupon he answered: Read there "whatever was not constructed with one of them."

Come and hear another objection: Aba Saul said, there were two Bitzin on the olive mountain, an upper and a lower one; the lower one was sanctified strictly in the manner prescribed by the Mishna, while the upper one was sanctified only by the ascendants from the exile, in the absence of both king and Urim and Tumim. The lower one, whose sanctification was complete, common people used to enter and consume there their lenient holy food, but not second tithe; scholars, however, used to consume there both. In the upper one of the incomplete sanctification the common people used to consume the lenient holiness, while the scholars did not partake there of anything. But why did not they sanctify it completely? Because the complete sanctification needs a king, etc., as prescribed by the Mishna, and such were not at that time. But why, then, was it at all considered a part of Jerusalem? Because being a suburb of Jerusalem it was easily accessible (hence, it is obvious that sanctification cannot be complete unless performed in the manner prescribed by the Mishna)? Concerning this matter the Tanaim of the following Boraitha differ. Ismael b. Josh said: To what purpose did the rabbis enumerate all the cities surrounded by walls from the time of Jehoshua b. Nun? Because the ascendants of the exile being placed in these cities, sanctified them; the first sanctification, however, was abolished when the land ceased to be that of Israel. R. Ismael thus holds that the first sanctification was good only for the present, but not for the future, and this would meet with a contradiction in the following. R. Ismael b. Josh said: Were, then, only these cities?

Is it not written [Deut. vi. 4, 5]: "Sixty cities . . . all these were fortified cities," why, then, had the sages enumerated them? Because the ascendants of the exile were placed in them; and not only to these cities, but also to all cities which were, according to tradition, surrounded with walls at the time of Jehoshua, apply all the commandments imposed upon such cities; for the first sanctification has sanctified them for the future also; whence it is evident that R. Ismael contradicts himself. The answer is that one of these Boraithas was said not by R. Ismael, but by R. Elazar b. Josh, as the following Boraitha states, it reads [Levit. xxv. 30]: "Lo choma," meaning literally no wall; but according to the traditional reading it is Lo-choma, meaning "it has a wall," *i.e.*, though it has no wall now but was walled at the time Israel entered Palestine.

"*In the courtyard and forgot it,*" etc. Whence is this deduced? Said R. Elazar [Numb. xix. 20]: "Because the sanctuary of the Lord hath he defiled," and [ibid., 13]: "Hath defiled the tabernacle of the Lord"; now, as there in so necessity of two verses for the inner defilement, one should be applied to the outer one. But are, indeed, the two verses superfluous? Are they not both needed for what we have learned in the following Boraitha in the name of R. Elazar: Why have two verses to mention both sanctuary and tabernacle, was not one sufficient? The answer is: If only tabernacle were mentioned, it could be accounted for by the fact of its being annointed with the holy oil, which was not the case with the temple, and therefore no liability is attached to defilement of latter, on the other hand, if only the holy temple were mentioned, the reason would be that it was sanctified once forever, which was not the case with the tabernacle; hence, the necessity of both the verses? R. Elazar found difficulty to see the reason for using two names, sanctuary and tabernacle, since elsewhere these two names are used synonymously; he, therefore, infers therefrom his two foregoing conclusions. His statement, however, that the temple is called tabernacle is correct, from [Lev. xxv. 11]: "And will set my tabernacle (*mishkoni*) among you"; but where is it found that tabernacle is called temple? In [Exod. xxv. 8]: "And they shall make me a sanctuary and I will dwell in it"; and verse 9 says: "I show thee the pattern of the tabernacle."

"*He made a bow or was lingering,*" etc. From this it may be said that the bowing must also take a certain time. Said Rabha: This is so only when, while bowing, he turned his face

to the outside, but not if to the inside of the temple; and the Mishna is to be interpreted thus: if he made the bow toward the inside or turned his face toward the outside for a certain interval; and here is an illustration: Suppose he kneels only, then no time is needed; but if he bows, *i.e.*, falls down and stretches his hands and feet, then a certain time must be taken up. And how long is this time interval? R. Itz'hak b. Na'hmeni, with whom was Simeon b. Pazi, according to others *vice versa*, or Simeon b. Na'hmeni, one says, it is so long as would take to say this verse [II Chron. vii. 3]: "And all the children of Israel were looking on as the fire came down, and the glory of the Lord was resting upon the house; and they kneeled down with their faces to the ground upon the pavement, and prostrated themselves, and gave thanks unto the Lord for he is good; because unto everlasting endureth his kindness"; while the other says: Only from "they kneeled" until the end of the verse. The rabbis taught: *Kidah* is bowing to the ground face to the earth, as [I Kings, i. 31]: "Then did Bath-sheba bow," etc.; kneeling is to stand upon the knees, as [ibid. viii. 54]: "From kneeling on his knees"; finally, bowing is prostrating one's self, as [Gen. xxxvii. 10]: "To bow down ourselves to thee to the earth."

"*If by the short way he is not guilty.*" Rabha said: On the short way even if he kept on going the whole day the toe of one foot touching the heel of the other, he is free. He, however, propounded a question: If his walk was interrupted every time, must these intervals be added and counted or not? Now, why does not Rabha decide his question by his own doctrine from above? Because above he treats of the case done without interruption. Abayi asked Rabba: If he walked through the long way so quickly, as it takes no longer than by the short way, what then? Is the time essential and then he is free, or is the way essential and then he is liable? He answered: The long way cannot be made shorter by contracting the time of walking it.

R. Oshia said: I would like to say something, but am afraid of my colleagues; if one enters a leprous house backwards, although all his body was already in the house except his nose, he remains clean, as [Lev. xiv. 46]: "And he who goeth into the house," etc., means going in in the ordinary way, but not backwards; now, the reason of my hesitating is that my colleagues may, on the basis of the latter quotation, say that even when all his body, nose, too, is already in the house he is clean.

Said Rabba: If the *whole* body was in, he should not be worse than vessels in such a house, of which it reads [ibid. 36]: "That all shall not be made unclean." There is a Boraitha supporting R. Oshia: On the roofs of the temple no holy of holy food must be consumed, no lenient holies must be slaughtered there, and he who, while unclean, enters the temple by these roofs is not culpable, as [ibid. xii. 4]: "And into the sanctuary shall she not come" means the coming in in the ordinary way.

"*This is a positive command concerning the holy temple,*" etc. What is the standpoint of the Tana from which he says "*this* is"? He refers to a statement in the Mishna in Horioth (Mishna, I.): There is no liability attached to a positive and negative commandment, etc., regarding which our Tana says: *This* is the positive commandment to which liability is not attached; but where, then, is a positive command entailing liability? It is "the having of intercourse with a woman" mentioned in the Mishna.

It was taught: Abayi said in the name of R. Hyya b. Rabh, in this last case the transgressor is liable to twice stripes: one for the intercourse, and one for the separation. So also said Rabha in the name of Samuel b. Shila, quoting R. Huna. Rabba, however, deliberating on this point, said: Let us see how was the case; if it treats of a scholar who had relation with his wife at the time she usually gets her menses, then he is justly culpable for the intercourse as for an unintentional offence, as he thought he will finish before, and for the separation, which act is with him as a scholar an intentional one, he is not liable to stripes (as such an act entails Korath); on the other hand, if it treats of an ignorant, why should he be liable twice? Is this not a case analogous to that where one consumed twice illegal fat the size of an olive in one forgetfulness, when he is culpable only once? And should you say that the transgressor acted so not at the usual time of menstruation, then, if he be a scholar he is not liable at all, since the intercourse was had innocently, while as regards separation it is here, too, an intentional act; if, however, he be an ignorant, he is culpable only once, *i.e.*, for the separation! Said Rabha: It treats of a time near to the menstruation, and of him who is a scholar and is aware that one must not have intercourse at such a time, but not that separation is prohibited (he is culpable twice: for the intercourse, because though aware that he must not have, he may none the less have thought that he will finish it before the menses ensue;

and for the separation, the prohibition of which was unknown to him). Rabha said further: Both the acts we find treated of in Mishnaioth; concerning separation in our Mishna, and concerning the intercourse in Tract Nidah, as follows: If blood be found on his shirt the two are unclean and liable to a sin-offering.

The master says: Immediate separation entails culpability. How then should he behave? Said R. Huna in the name of Rabh: He should support himself on the tips of his fingers until *phallus moretur* and then separate himself.

It was taught: R. Jonathan b. Lequnia asked his brother, R. Simeon, where is the warning against having intercourse with a menstruant woman? In answer he took some dry mud and threw it upon him, saying: Is it not plainly stated in [Lev. xviii. 19]? Whereupon he rejoined: I mean to ask where is the warning against separating one's self from her who gets her menses in the time of intercourse? Said 'Hiskia, from [ibid. xv. 24]: "And if any man should lie with her, and the uncleanness of her separation come upon him," etc., which means even when he separates from her when the menses ensue during the intercourse. But again, here we find only the positive command: "He shall be unclean seven days" [ibid.]; where, then, is the negative command against separating one's self? Said R. Papa: The above-cited verse [ibid. xviii. 19]: "Shalt thou not approach (*Tikrab*)" means also thou shalt not separate thyself, as [Isa. lxv. 5] uses the word *K'rab'* to mean separating, so does there *tikrab'* mean separate.

The rabbis taught [Lev. v. 31]: "And ye shall separate the children of Israel from their uncleanness," whence you derive the warning that the children of Israel should separate themselves from their wives near the period of menstruation; so R. Jashia. And for how long? Said Rabha: For twelve hours. R. Johanan said in the name of R. Simeon b. Jo'hai: He who does not separate from his wife at the said period, his children even if equal to the sons of Aaron, will die; as after the above-cited verse and verse 33 follows the mention of the death of Aaron's children. R. 'Hyya b. Aha said in the name of R. Johanan: He who does separate himself for that period will be rewarded with male children, as [ibid. xi. 47: "To distinguish between the clean and unclean," is followed by [ibid. xii. 2]: "If a woman . . . and born a male child." R. Jehoshua b. Levi added: He will be rewarded with sons who will be fit to

decide law questions, as it reads [ibid. x. 10, 11]: "So that ye may be able to distinguish, . . . to teach." R. Benjamin b. Japheth said in the name of R. Elazar: He who sanctifies himself during the intercourse will be rewarded with male children, as [ibid. xi. 44]: "Ye shall sanctify yourselves," etc., which chapter is followed by verse [ibid. xii. 2].

"*A reptile*," etc. What is the point of their difference? Said 'Hiskia: A reptile and a carcass; according to R. Eliezer he must exactly know the cause of his defilement, whether reptile or carcass, while R. Aqiba maintains that the knowledge, and not the exact cause, of his defilement is necessary. And so also was this point explained by Ula.

The rabbis taught: "If there were two paths one of which was unclean (but it was not certain which one), and one passed through one of them entering, however, the temple after passing through the other path, too, he is liable; if, however, after passing the first path he entered the temple by forgetting and on becoming aware therof he performed the sprinkling and took a legal bath, and then passed the other path and again entered the sanctuary by forgetting, he is liable. R. Simeon, however, declares him free. On the other hand, R. Simeon b. Jehudah holds him, in the name of R. Simeon, free even in the first case." How is this last decision to be understood? In the first case where he passes the *two* paths there is no doubt that he passed an unclean one, how, then, can he be free? Said Rabha: The decision concerns a case where he, having passed both paths, forgets, enters the temple, and thereafter recollects his passing through but one of the paths; and the point of difference here is that the first Tana quotes R. Simeon as holding that partial cognition is considered as the whole, which R. b. Jehudah in his name denies. But why does the Boraitha hold liable him who has performed sprinkling, etc.? Is not here the cognition concerning a *doubtful* case and hence he should not be liable? Said R. Johanan: Here the Tana regards the doubtful cognition as a certain one. Resh Lakish, however, said: This Boraitha is in accordance with R. Ismael, who holds that antecedent cognition is not requisite.*

* The further discussion will appear in Tract Kerithoth.

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE OATH-TRANSGRESSION CONSIDERED AS REFERRING TO BOTH PAST AND FUTURE.—THE DETERMINATION OF THE SIZE OR QUANTITY OF THE OBJECT REGARDING WHICH THE OATH IS MADE.—THE WORDING OF THE OATH.—IS OR IS NOT DRINKING INCLUDED IN EATING (TO WHICH THE OATH REFERS) AND *vice versa*.—DOES OR DOES NOT THE REPEATED STATING OF THE OATH ENTAIL A SEPARATE LIABILITY.—TO WHAT ACTS OR WORDS THE OATH RELATES.—OATHS MADE BY COMPULSION.—OATHS CONCERNING THE FULFILLING OR IGNORING OF A COMMANDMENT.

MISHNA *I.*: There are two kinds of oaths subdivided into four—viz.: I swear that I will eat or will not eat; that I did or did not eat. If upon making the oath, I will not eat, he does eat, and be it but a minimum, he is guilty; so R. Aqiba. Whereupon he was questioned: Where do we find a similar case that one be guilty for a minimum, so that this one be declared guilty? He replied: Where do we find that one must bring an offering for mere talk, as this one does talk and brings an offering?

GEMARA: The rabbis taught: "The expression *Mib'ta* of [Numb. xxxvii.] is considered an oath, and also the word *Issor* is considered such; and what prohibition attaches to this last form of an oath? If you decide that *Issor* is an oath, liability is attached to its transgression." Now, how is this to be understood? Does not the Boraitha state expressly that *Issor is* an oath? Said Abayi: It means to say thus: The expression *Mib'ta* is an oath, and if one says: This object is *Issor* to me as the first, and this third object be to me as the second, it is in such a case that, if it be decided that the making of an oath on a thing by comparing it to the first one *is* an oath, the second one is prohibited (*e.g.*, if one says: I swear not to eat this meat, then pointing to a bread he says: This bread be for me equal to the said meat; and then again: This fish be equal to this bread. In

such a case if swearing by *comparing* one object to another is an oath, each thing is prohibited).*

But whence do we know that the expression *Mib'ta* is an oath? From [Lev. v. 4]: "Or if any person swear, by pronouncing with his lips (*Leb'ata*); now, it reads [Numb. xxx. 3]: "Or he swear an oath to bind his soul with an *Issor* (obligation)," hence, *Issor* is *obviously* also an oath? Therefore said Abayi: That Mib'ta is an oath, is inferred from [ibid., ibid. 7]: "Or what she may have uttered (*Mib'ta*), wherewith she hath bound (*Assro*)"; from here we see that "she has bound," not sworn, and it is with *Mib'ta* that she has bound herself. Rabha, however, said: There is no necessity of Abayi's explanation, as swearing by comparing is not considered; and as to the above Boraitha, it may be simply explained, as follows: *Mib'ta* is an oath, *Issor* is also an oath; however, *Issor* is found used between vow and oath, and this is what the Boraitha says: If one expresses *Issor* as a vow, it is a vow, and if as an oath, it is an oath. And where is it found in such connection? [Ibid., ibid. 11]: "And if she had vowed in her husband's house, or had bound her soul by an obligation (*Issor*) with an oath." And the explanations of Abayi and Rabha are respectively in accordance with their theories elsewhere; as it was taught: If one swears by comparing, it is, according to Abayi, the same as swearing directly with the word oath, while according to Rabha it is not so.

An objection was raised from the following: What is *Issor* mentioned in the Torah? If one says, I take upon myself not to eat meat, not to drink wine just as on the day of the death of my father or of a certain man, *e.g.*, Gedaliuhu b. Achikom, or as on the day when I have seen Jerusalem destroyed, it is an *Issor;* and Samuel adds: Provided he has previously *vowed* already not to consume these objects on those days. Now, according to this, Abayi's theory is correct, as we see here that one may make a vow by comparing, hence, he may also make an oath by comparing; but Rabha's theory remains open to objection? Nay; Rabha may say that the cited Boraitha should read thus: "What is an *Issor of a vow* mentioned in the Torah"? "If one says," etc.; and to this Samuel makes his addition, by reason of [ibid., ibid. 3]: "If a man vows a vow," which means:

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* This illustration is taken from 'Hanannel, as Rashi's illustration here is too complicated.

He vows on a thing on which he has already vowed. Moreover, Gedaliuh's day is specifically mentioned in the Boraitha in order to teach that, notwithstanding that it is a general fast-day, one's vow is only then a vow if he has previously vowed especially for this day; and again, lest one say, this being a general fast-day a vow referring thereto is not considered at all, consequently such a vow is not even one by comparing, and hence should be wholly disregarded, it comes to teach us that it is not so.

R. Johanan, too, upholds Rabha's theory, as Rabin, on coming from Palestine, said in his name: If one says, *Mib'ta*, I will not eat, or *Issor*, I will not eat, it is considered an oath. However, when R. Dimi came from Palestine, he said in the name of the same authority: The oath for a future, *e.g.*, I will or will not eat, is considered *false*, and the warning against it is in [Lev. xix. 12]: "And ye shall not swear by my name falsely." Furthermore, the oath for the past, *e.g.*, I have or have not eaten, is considered *vain*, and the warning against it is in [Exod. xx. 7]: "Thou shalt not take the name of the Lord thy God in vain," and against a vow the warning is found in [Numb. xxx. 3]: "He shall not profane his word."

An objection was raised from the following: Vain (*Shahve*) and false (*Shekker*) are identical. Does not this mean that just as *vain* refers to a past, so does false, too, refer to the post? Why, vain and false are identical in respect of another point, but each of them has its signification as above; as there is a Boraitha: *Zachor*, ye shall remember (in the first ten commandments) and *Shamar*, ye shall observe the Sabbath (in the last ten commandments) were uttered by the Lord in one word, which transcends the power of the human mouth and ear.* But what does this Boraitha teach us thereby? The following: Just as stripes are applied to a false, so they are also to a vain oath. But is not this self-evident, as both are negatives? Lest one say that it is as R. Papa said to Abayi (further on), it comes to teach us that the Halakha prevails with Abayi.

When Rabin came, he said in the name of R. Jeremiah that R. Abuhu said in the name of R. Johanan that an oath for the past is a false one, and the warning against it is as cited above; and an oath for the future is merely a transgression of "He shall not profane his word," as above; and a vain oath is when one swears, *e.g.*, that a man is a woman. Said R. Papa: R. Abuhu's

* The continuation of this will be translated in Tract Benedictions.

statement was not explicitly stated, but inferred from the following: It was taught, Aidi b. Abin said in the name of Amram that R. Itz'hak said in the name of R. Johanan that R. Jehudah, quoting R. Jose the Galilean said: Stripes apply to all negatives of the Torah implying manual labor, but not to those without manual labor; excepting, however, an oath, an exchange and a curse upon one's neighbor by the holy name, to which three, though not implying manual labor, stripes apply. And whence do we know that it is so concerning an oath? Said R. Johanan in the name of R. Simeon b. Jo'hai, it reads [Exod. xx. 7]: "For the Lord will not hold guiltless," etc., which means only the heavenly court, but the worldly court will make him guiltless by punishing him with stripes.

Said R. Papa to Abayi: But maybe it means that no one can make him guiltless? And he answered: It would be so if it were not predicated of the Lord; but as it is, it can but mean that not the Lord but the earthly court will. All this concerns a vain oath, but whence do we know that the same is the case with a false one? Said R. Johanan, his own opinion: In the cited verse "vain" is mentioned twice, and as the second is not needed for itself, apply it to a false oath. R. Abuhu, however, deliberated as to how should be the case? If one swears, I will not eat and did eat, then there is an act done, hence it is in the category of negatives with manual act; again, if he swears, I will eat but did not eat, it is a case to which stripes do not apply according to both R. Johanan and Resh Lakish? (above p. 25). Upon due deliberation, however, R. Abuhu decided that it means an oath referring to the past, *e.g.*, I swear that I have eaten, and he did not eat, or *vice versa;* and though there is no manual labor here stripes apply, as Rabha said: The Torah has expressly extended the provision of the vain oath to the false one, to teach that just as a vain refers to the past, so also a false oath.

"*And be it a minimum,*" etc. The schoolmen questioned: Does R. Aqiba hold with R. Simeon who declares one liable for a minimum with regard to all biblical transgressions? As we have learned in the following: Stripes apply even to a minimum, and the size of an olive is prescribed only concerning an offering. And why does R. Aqiba differ here, when he does not differ in any other places? Is it in order to let you know the power of his opponents, the rabbis, who say that if one swears not to eat even a minimum and did eat such, he is nevertheless

not liable! Or, in all other cases he agrees with the rabbis, while here he differs; because if one swore not to eat a minimum he would certainly be liable if he did eat, hence he is also liable if he swore generally, without mentioning the word minimum? Come and hear. R. Aqiba said: A Nazarite who has soaked his bread in wine and consumed it, is liable provided wine of the size of an olive entered the bread; now, should he hold with R. Simeon, why does he require the size of an olive? And also from the next Mishna, concerning reptiles which the Gemara explains in accordance with R. Aqiba, that a man may impose upon one's self the prohibition of even a minimum, it is inferred that he agrees with the rabbis in all cases.

"*Where do we find,*" etc. But is there not a moth, which is but a minimum in size, and yet one is liable for consuming it? It is different with living creatures. Again, is not one liable in the case of the sanctuary? Here also there must be no less than the value of a *Peruta.* But does not he himself say that if one expresses a "minimum" he is liable? The expression raises it to the value of a creature. But is there not a case regarding earth, where no definite quantity is requisite? And should you say that it is, then solve the following question propounded by Rabha: If one swore that he will not eat, and thereafter ate earth, what quantity thereof makes him liable, by saying that the quantity of an olive is required! Nay; because earth is not eatable, you cannot very well assign to it a definite quantity. But is not such the case with vows? A vow is equivalent to the expressions "minimum" used in an oath.

"*As this one does talk and brings an offering,*" etc. But is not such the case with the blasphemer who is liable for mere talk? Here a case is looked for where one imposes upon one's self a prohibition by talk, while the blasphemer *sins* with his talk. But is not the case of a Nazarite, who brings an offering for mere talk, analogous? Nay; the Nazarite brings the offering, that wine become allowed to him. But does one not impose a prohibition by saying: "This should be sanctified?" We look for a case where one imposes the prohibition only upon one's self, while in this case the prohibition is general. But does not one prohibit a thing to one's self by saying: "This is a vow for me?" (And if he uses the thing unintentionally he must bring an offering.) The Tana of the Mishna holds that to this case an offering does not apply. Said Rabha: They differ only regarding the case where he did not express the word "minimum,"

but if he did, the expression raises it to the value of a creature. He said again: They differ only when he said, "I will not eat," but if he said, I will not taste, all agree that he is liable. And Rabha says this lest one say that with the expression "taste" one intended to mean "eat." Said R. Papa: They differ only concerning vows, while as regards oaths all agree that liability attaches even to a minimum, because by saying "this is a vow for me" he does not mention eating.

MISHNA *II.*: (If one says): I swear that I will not eat, and thereafter eats and drinks, he is guilty but once. But if he says: I swear that I will neither eat nor drink and did both, he is guilty twice. If he says: I swear not to eat and then eats wheat bread, barley bread and rye bread, he is guilty but once; if he swears: I will not eat either wheat bread, barley bread or rye bread and then eats, he is guilty for each one severally. I swear that I will not drink, and thereafter drinks varied beverages, he is guilty but once; I swear I will drink neither wine, oil, nor honey, and then drinks, he is guilty for each severally. I swear not to eat, and then ate things not suitable to eat, and drank something not suitable as a drink, he is free. If he swore not to eat and thereafter ate carcasses or illegal cattle, reptiles and vermin, he is guilty. R. Simeon declares him free. If one said: I swear to abstain from deriving any benefit from my wife if I have eaten to-day, and he did eat carcasses, etc., his wife is prohibited to him for all benefit.

GEMARA: R. Hyya b. Abin said in the name of Samuel: If one swears not to eat and thereafter drank, he is guilty. If you wish, this is mere common sense, since ordinarily a man inviting the other one to have a bite, the two go in and eat *and* drink: or if you wish, it is found in the Scripture that the expression eat includes also drinking—viz.: in [Deut. xiv. 16]: "In cattle, sheep, wine . . . and thou shalt *eat* these." But perhaps it means there an *aino garum* (a dish in which wine is mixed)? The verse says further *Shechor** (old wine), which means an intoxicating beverage. Neither can it here be spoken of a date of the City of Kehilla, which when eaten intoxicates and regarding which a Boraitha says that one who had eaten it and then entered the sanctuary is culpable, as the word *shechor* here is analogous with the same word used concerning a Nazarite where it surely means only wine for which he is culpable. Said

* *Shechor* is old wine and *Shiccor* from the same stem means intoxicated.

Rabha: This is implied also in our Mishna: If one swears not to eat, and then eats and drinks, he is culpable but once, which signifies that the drinking is included in the eating; for if this were not the case, to what purpose would the express teaching be? Would it be necessary, *e.g.*, for the Tana to teach expressly that the oath regarding eating makes one culpable only for the eating and not for performed labor? Said Abayi to him: According to your doctrine that eating includes drinking, how is the second part of the Mishna "I will neither eat nor drink" to be understood? As eating includes drinking, why is he culpable twice? And he answered: Because of the expression; the addition "nor drink" shows clearly that his "I will neither eat" was not yet in *his mind* including drinking. Said R. Ashi: It seems to me, too, that the teaching of the Mishna implies drinking in eating, hence, "I swear not to *eat* and then ate things not eatable and *drank* things not suitable to drink," which implies that if the things he drank were suitable, he would be liable, hence we see that drinking is included in eating. However, this is hardly evidence, as the Mishna here may mean that he said in his oath both eat and drink.

"*I will not eat either wheat bread . . . he is guilty for each.*" But perhaps he intends by mentioning expressly bread merely to exclude other things which to eat he shall be free? If such were the case, he would not repeat the word bread with each kind separately. But again, maybe he uses repeatedly the word bread in order to prevent the belief that he swears with regard to wheat bread not to *eat*, while with regard to the others not to *chew?* If this were his intention, he would say: I will not eat wheat bread, nor barley, nor rye, without repeating bread each time. But if he said so, his oath could be understood to concern a mixture of all these, but not each singly and severally? Then let him say: I will not eat bread of wheat, of barley, or of rye, without repeating *bread*. Hence, the repetition must have been intended to emphasize that he makes an oath for each severally.

"*I will drink neither wine, oil . . . he is guilty,*" etc. Here again the question arises, maybe he intends to exclude other beverages, as here the above argumentation cannot be advanced, since the beverages are here specified. Said R. Papa: It speaks of a case where all these liquids were standing before him, so that he could by pointing to them swear not to drink them; why, then, are they specified? To indicate that he makes an

oath for each one. But if so, it could be said that he must not partake only of these before him, but of other wine, etc., he may? Let him then say: I will not drink of these before me, nor of their kind in general. Hence, it must be said that the specification is intended to make the oath for each severally. R. Aha b. R. Aika said: The Mishna speaks of one invited by his neighbor to drink with him wine, oil and honey, to which he could answer: I will not drink with you (without repeating wine, oil and honey); hence, his repeating the liquids makes him liable for each one separately.

"*I will not eat and then ate things not eatable,*" etc. Does not the Mishna contradict itself? It states that on eating an unsuitable thing he is free, and hereafter it declares him culpable for eating carcass? What are the reasons to account for these two parts respectively? This presents no difficulty. The first part speaks of the case when he says in general: I will not eat; while the second part speaks of the case when he expressly says: I will not eat *anything*. But even if this be so, why should the oath hold regarding reptiles, where an oath (not to eat such) lies on him already from the Mount Sinai? Rabh, Samuel and R. Johanan all three said: It speaks of the case when one includes in his oath the permissible with the forbidden—viz.: I will not eat legal and illegal things. Resh Lakish, however, says: A case like that of the Mishna cannot take place, unless he stated plainly not to eat even a half of the prescribed quantity; in which case according to the rabbis, who hold one liable only for the whole quantity, the oath concerns a half-quantity, and according to R. Aqiba, who says that liability attaches even to a minimum, the oath here concerns a half-quantity provided he has not plainly specified anything.

But why does not Resh Lakish agree with R. Johanan? He may say that R. Johanan's theory of inclusion can be applied only to prohibitions in themselves, such as, eating carcasses on the day of atonement, where the carcass is prohibited even if not on the day of atonement, nevertheless the rabbis make him liable also for the day of atonement, because as one is prohibited from eating legal food on that day, he is likewise prohibited from eating carcass, for the prohibition to eat includes legal as well as illegal food; however, where a prohibition is imposed by man upon one's self, no one can make him liable for inclusion. Said Rabha: The reason of him who holds that one is liable for an inclusion is that he compares it to an additional prohibition;

while the reason of him who holds that such is not the case is that an additional prohibition holds good when concerning one and the same piece, but not when concerning separate pieces; *i e.*, an inclusive prohibition is, *e.g.*, a carcass on the day of atonement, where the day itself adds nothing to the prohibition of the carcass as such, but does add a prohibition upon the man (viz : that he must not eat it on that day); while if, *e.g.*, illegal fat, which is prohibited to eat, but allowed for the altar, remains over night, it is prohibited also for the altar, hence, there is on *it* an *additional* prohibition (for its having remained over night), but this additional prohibition can be only on one and the same piece, but not on separate pieces.

Rabha said further that to him who holds the theory of inclusive prohibition, he who swears not to eat figs and hereafter swears not to eat figs and grapes, is liable for the figs twice; for the second oath resting upon the grapes, rests again upon the figs, too. But is not this self-evident? Lest one say that this theory applies only to prohibitions in themselves, and not to such made by man upon himself, he comes to teach us that there is no difference between the two cases.*

MISHNA *III.*: It is immaterial whether the things sworn off concern himself or others; whether they are or are not of some essential nature. *E.g.*, he says: I swear that I will or will not give something to this or that person; that I did or did not give him something; that I will or will not sleep; that I did or did not sleep; that I will or will not throw a stone into the sea; that I did or did not throw it. R. Ismael says: One is guilty only for an oath made with reference to the future, for it is written: To do evil or to do good. Said to him R. Aqiba: According to this view I know but about oaths concerning things that are intrinsically either evil or good, but whence do I learn about those regarding things that entail neither evil nor good doing? Retorted the former: From the addition in the Scripture; to this rejoined the latter: If the Scripture widens the notion in this respect, it does it likewise in the other (case).

GEMARA: The rabbis taught: In some respects vows are more rigorous than oaths, in others oaths are more rigorous than vows. Vows are more rigorous in that their liability attaches even to commandments, *e.g.*: If one says, I vow not to make a

* The discussion following here, being but repeated from its proper place, is here omitted.

sukkah, and hereafter he makes one, he is liable for transgressing the vow; which is not the case with an oath (as an oath rests upon him from the Mount Sinai). On the other hand, oaths are more rigorous than vows in that their liability attaches also to things not essential, which is not the case with vows.

"*I will or will not give,*" etc. What does it mean, "I will give"? If charity to the poor, it is obligatory for him by oath on the Mount Sinai? Nay; it means a present to a rich man.

"*I will or will not sleep,*" etc. But has not R. Johanan said that if one swears not to sleep for three days in succession, he gets stripes and is put to sleep immediately (because one cannot keep from sleeping for three days)? This is no difficulty, as in the case of the Mishna no number of days is specified.

"*I will throw a stone,*" etc. It was taught: If one said, I swear that so and so has or has not thrown a stone into the sea, according to Rabh he is culpable, as he transgressed a negative; according to Samuel he is not, for such an oath can not be made with reference to the future. Shall we assume that the above differ in the same in which R. Aqiba and R. Ismael differ in our Mishna: R. Ismael said, one is liable only for the future, as it reads: To do evil or to do good; whereupon said R. Aqiba: If it were as you say, the liability would apply but to things that are intrinsically either evil or good; and he answered: From the addition in the Scripture: To every thing uttered with his lips; whereto R. Aqiba rejoined, etc. Whence it would appear that Rabh is in accordance with Aqiba, and Samuel in accordance with R. Ismael? Nay; according to R. Ismael, who frees one for the past even in a case where a future is possible, there can be no doubt that in the case illustrated above, one should be culpable; but where they do differ is concerning the interpretation of R. Aqiba's view. According to Rabh, R. Aqiba holds one liable for transgressing a negative immaterial whether such an oath can or can not apply to a future; while Samuel maintains that R. Aqiba's view applies only to a case where an oath for the future *is* possible, but not to other cases.

Said Abayi: Rabh admits that if one says, I swear that I know something to testify for you, and it is found hereafter that he knows nothing, there is no liability in this case because the negative, I swear that I do not know, etc., is not possible here (as this is not considered an utterance, but belongs to the category of testimony). But regarding the oath, I was or was not aware of testimony in your case, or, I have or have not testified,

Rabh and Samuel still differ. (Says the Gemara): According to Samuel's theory it is correct that the law has excluded the witness-oath from the category of uttered oaths, as there is a rule that where there is no future possible, no liability attaches to the past; but according to Rabh who disregards this rule, why were the witness-oaths excluded? Said the rabbis before Abayi: In order to make one liable twice (*i.e.*, if one is fit to testify, knows the case, and nevertheless denied it before the court, he is liable twice, for the witness-oath and for an uttered oath). Said Abayi to them: It is impossible to make one liable twice, as it reads plainly [Lev. v. 4]: "That he hath incurred guilt by *one* * of these," which means, he can be punished once but not twice. But, then, to what other purpose have the witness-oaths been excluded, according to Abayi? To what we have learned in the following: Concerning all oaths it reads "escaped his memory," except the oath of a witness, to make him liable (to a sin-offering) for an intentional oath just as for an unintentional one. Said the rabbis to Abayi: Say, then, that for an intentional he is liable to one, and for an unintentional he should be liable to two, viz.: for a witness and an uttered oath? And he answered: Have I not said that the above-cited verse prevents it from making one liable to two? And as to an intentional, the liability of an uttered oath does not exist there.

Rabha, however, said: The reason why there can be no two liabilities is this: There is a rule that, if to something that was included in the general a new law be applied, only by the new one must guide one's self (*i.e.*, the witness-oath as an oath is included in the general uttered oaths, and when the Scripture makes for it a new special law of liability, you cannot any more apply to it also the liability attached to the uttered oath). But how is it according to Abayi? Does he hold that there is such an oath at all? Has he not declared above that Rabh admits that if one swears: I know testimony for you, etc., there is no liability here, as such oath cannot be made in the negative, whence it would seem that such in the negative does not exist at all? He has retracted his above statement, or, if you wish, one of the above statements was not said by Abayi but by R. Papa.

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* Here the word *l'achath* (to one) is taken by the text literally: one; while further on it is explained to mean '*to* anyone'.

"*One is guilty only . . . with reference to the future.*" The rabbis taught, it reads [Lev. v. 4]: "To do evil, or to do good," whence we infer only those that are in themselves either good or evil; but whence do we know about oaths concerning other things? From [ibid., ibid.]: "Pronouncing with his lips," etc. But all this is concerning the future; whence do we know the same concerning the past? From [ibid., ibid.]: "In *whatsoever* it be"; so R. Aqiba. R. Ismael, however, says: "To do evil, or to do good" means only oaths for the future. Said to him R. Aqiba: If such be the case, we know only about oaths concerning things intrinsically good or evil, but whence do we know about those regarding other things? Retorted the former: From the addition in the Scripture ("whatsoever"), whereupon rejoined R. Aqiba: If the Scripture widens the notion in this respect, it does it likewise in all other respects. Now, is not R. Aqiba's statement perfectly correct? Said R. Johanan: R. Ismael, who was a disciple of R. Ne'hunia b. Hakana, who was in the habit of interpreting the Scripture by generals and particulars, proceeds in the same manner as his master; while R. Aqiba, who was the disciple of Na'hum of Gimzu, whose method of interpretation was extensions and limitations, follows his master's method. And this is as stated in the following Boraitha: "If any person swear" is an extension; "To do evil or good" is a limitation; "In whatsoever it be" is again an extension, and there is a rule that such an extension includes everything, while a limitation is excluding a commandment. This is in accordance with R. Aqiba; while R. Ismael, whose method is the generals and particulars, interprets the verse thus: "If any person," etc., is a general; "To do evil or good" is a particular; "In whatsoever" is again a general, and there is a rule that wherever there is a particular between two generals, the latter must be interpreted in the sense of the particular; now, as the particular here refers expressly to the future, so also everything relates to the future; the generals, however, affect in the same way all other things relating to the future, but not implying either good or evil, while the particular affects things relating to the past, that they be excluded. (Says the Gemara): And why not the reverse? Said R. Itz'hak: They must be similar to the particular (of to do evil, etc.), which is prohibited because of the above-cited [Numb. xxx.]: "He shall not profane his word," excluded the past to which the prohibition is "He shall not lie." R. Itz'hak b. Abin, however, said: This is inferred from the cited verse,

" If any person swear by pronouncing," which signifies that the oath was before the act, but not the past where the act was before the oath.

The rabbis taught: " If any person swear," etc., intends to exclude compulsion; " Escaped " to exclude intention; " From his memory " to signify that the oath escaped his memory but not the thing in question; hence, one is culpable only for forgetting the oath, but not for forgetting the object.

The master says: " To exclude compulsion," what could illustrate this? As it happened to R. Kahana and R. Assi after the lectures at Rabh's college had ceased; one would say, I swear that Rabh said so and so, and the other would say, I swear that Rabh said the contrary, and when they came to ask Rabh on the point, he certainly said as one of them; and to the question of the other, Have I sworn false, Rabh answered: You were compelled by your conscience and the verse " Escaped (from) his memory " means the oath but not the object.

This statement was ridiculed in the west. An oath and not the object is to be found, *e.g.*, in: I swear not to eat wheat bread, and thereafter he thinks that he swore to eat, and accordingly eats it, hence, he forgot the oath but not the object; but where do you find a case where the object is forgotten and not the oath? As, *e.g.*, in: I will not eat wheat bread, and thereafter ate it thinking it to be of barley, hence, he has the oath in mind and not the object; but as he forgot the object, is it not as if he forgot the oath? Therefore, decided R. Elazar that it makes no difference what one forgets. R. Joseph opposed: Is it indeed so, that the object cannot be forgotten without the oath? May it not happen that one swear not to eat wheat bread, and then stretch his hand to the basket where there was both barley and wheat bread with the intention to take that of barley, but takes that of wheat, and eats it up in the belief that it is of barley? In this case he had the oath clearly in mind, but he did not recognize the object. Said Abayi to him: But when he brings the offering, why does he bring it, for the bread he has eaten? Surely because of the oath (hence, they were right in the west). R. Joseph, however, insists on his statement for the reason that if he actually recognized that this is wheat bread, he would certainly abstain from it, hence, here is the ignorance of the object.

Rabha questioned R. Na'hman: How is it if he forgot both? And he answered: As soon as he became ignorant of the oath

he is culpable. Rejoined Rabha: Why not the contrary? Here is the ignorance of the object, and hence he should be free? Said R. Ashi: In such a case we have to examine the nature of the case; if he abstained from the object by recollecting the oath, then the ignorance of the oath is the main thing, and he is culpable; but if he abstained by recollecting the object, then the ignorance of the object is the main point, and he is free. Said Rabina to him: I do not see any difference here; if his abstention is caused by the recollection of the oath, is not here also the recollection of the object brought about? And the same may be asked *vice versa;* hence, there can be no difference here.

Rabha questioned again R. Na'hman: How can an unintentional uttered oath take place for the past? If he (who swears) is while swearing aware that it is false, then it is intentional; and if he is not aware, then it is a case of compulsion. And he answered: Take the case where he is aware that such an oath is prohibited, but is not aware that the liability of a sin-offering is attached thereto. Is this in accordance with Munbaz, who holds that such an ignorance be considered, and not in accordance with the rabbis, his opponents? Nay; this may even accord with the latter, as they differ with him only in all other cases of the Torah, but not in this case, for it is a novelty, as we do not find anywhere in the Scripture that one should be liable to a sin-offering for a negative except in this case, in which, therefore, the rabbis, too, agree with Munbaz.

Rabina (the elder) questioned Rabha: Suppose one swear not to eat this bread, and then he is in danger if he does not eat it, how is it? In danger! then he is certainly allowed to eat it! Said Rabina: I mean to say that suppose he ate this bread while impelled by hunger and having forgotten his oath not to eat it. And Rabha answered: Concerning this we have learned elsewhere, a sin-offering applies only to such a case where he would abstain from eating if he recollected his oath, but not otherwise; while here, being, as he is, impelled by hunger, he would not abstain, it cannot be considered unintentional.*

Samuel said: It is not sufficient that one make up his mind, he must pronounce it with his lips, as it reads "By pronouncing with his lips." †

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* The explanation here is that of Hanannell's second version, Rashi not being clear on the point.

† This statement is objected to by many, but the objections are overthrown ; and as all this discussion is both complicated and unimportant, we omit it.

MISHNA *IV.*: If one swears to ignore some commandment and does not carry out his oath, he is free; if he swears to fulfill a commandment and fails to realize his oath, he is free. It appears on the first glance that he should rather be guilty, as R. Jehudah b. Battina argues thus: Since one is guilty for oaths regarding voluntary acts not provided for from the Mount Sinai, so much the more is it so in the case of oaths regarding commandments, to which he is sworn in from the Mount Sinai. Whereupon he was retorted: If you declare him guilty in voluntary acts where affirmation and negation are both alike indifferent, you can by means do the same in oaths concerning commandments where affirmation and negation are not equivalent; since one is free, if he swears to, but does not, violate a commandment.

GEMARA: The rabbis taught: Lest one say that one who swore to ignore a commandment and did not, should be culpable, it reads, "To do evil or good"; just as to do good unto one's self is a voluntary act, so also an evil act must be voluntary, and this excludes him who swore to ignore a commandment. Furthermore, lest one say that he who swore to fulfill a commandment and did not, should be culpable for the oath, we again compare the good to the evil act: just as latter is voluntary in this case, so must former be voluntary, and this excludes the case of an oath to fulfill a commandment. Again, lest one say that if one swore to do evil unto himself and did not, he should be free, we again compare evil to good; just as the latter means voluntary, so also the former, hence, it includes the case where one swore to do evil to himself, which he was at liberty to do, and he is culpable. Finally, lest one say that the same is the case if he swore to do evil to others and did not, we compare evil to good, which latter is voluntary, while in the case of strangers he is not at liberty to do evil, hence he is free. But whence do we know that he who swore to do good to others and did not, is culpable? From "*or* to do good." What is an evil doing to others? *E.g.*, one says: I will strike so and so, and split his head.

(Says the Gemara): But whence is it known that the above-cited verse treats of a voluntary act, perhaps it has in view a meritorious act? This cannot be borne in mind, as the two, the evil and the good, must be compared with each other; and as doing good cannot be spoken of concerning the ignoring of a commandment, so also doing evil cannot treat of ignoring a com-

mandment, hence, this expression of doing evil would be in this respect good, as it does not apply to the ignoring of commandments; on the other hand, the good-doing is compared to the evil-doing: just as the former cannot treat of the fulfilling of a commandment, so also the latter cannot; hence, in this respect the good-doing would be evil (therefore, the expression in question cannot treat of meritorious acts). But in the light of these considerations, this expression cannot treat of voluntary acts, either, where good and evil means to do good and evil unto one's self respectively, hence, here, too, good would in some respects be evil (as, *e.g.*, the oath not to eat a harmful thing) and *vice versa?** Therefore we must say that, because it was needful to the Scripture to use the disjunction "or" in order to indicate doing good to others, it must treat of voluntary acts; since if it treated of commandments, the "or" would not be necessary, as it would be self-evident, for as the doing evil to others is included here, so much the more the doing good!

"*R. Jehudah b. Bathira,*" etc. Is not the argument of the rabbis against R. Jehudah b. Bathira correct? He may say thus: Let us see; was it then necessary for the Scripture to add that if one swore to do good to others and did not, he is culpable; is this not self-evident, since one is not culpable for an oath to do evil to others, being as he is not free to do so, he is culpable when he *is free* to do so; and nevertheless the Scripture did add, hence, the same is the case with the oath to fulfill a commandment, where, although it is self-evident that he is culpable in this case because he is not culpable when he swore to ignore a commandment, yet the Scripture adds it. To all which the rabbis might say: These two cases are by no means analogous, as when one swears not to do good to so and so, he is culpable, while if one swears not to fulfill a commandment, and thereafter he does fulfill, he cannot be culpable.

MISHNA *V.*: If one swears, I will not eat this loaf of bread, I swear I will not eat it, I swear I will not eat it, and eats it nevertheless, he is guilty but once. This is an uttered oath for the intentional violation of which one is subject to stripes, and for whose unintentional violation to a poor or rich offering. Vain swearing, if wilfully done, is punished with stripes, but if committed unintentionally, is free from punishment.

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* The commentaries on the point are in great perplexity.

† The discussion here on the disjunction "or" is omitted, for it is already given in Sanhedrin.

GEMARA: To what purpose does the Mishna vary the language? It comes to teach us that only when making the oath in such expressions he is culpable but once; but if he said first: I will not eat it, and then, I will not eat this loaf, he would be culpable twice; as Rabha explains elsewhere that the expression "I will not eat this bread" makes one culpable when he ate of it the size of an olive; but if one says, "I will not eat it," he is not culpable unless he has consumed the whole of it; hence, if the Mishna stated first "I will not eat it, and then "I will not eat this loaf of bread" he would be culpable twice (as here were two *distinct* oaths: the former on the *whole* bread, the latter on the size of an olive; and the latter does not do away with the former, while the former if stated last would do away with the latter).

"*I will not eat it, and eats it none the less,*" etc. For what purpose is this repetition, since one oath does not rest upon the other, as we have seen it to be the case with the second one, and it is surely so with the third one, too? It comes to teach us that, though there is no liability, yet the oath is not ignored, and that in case there will be place for it, it may rest; this illustration is as Rabha said: In case he asked a sage to nullify the first oath, the next comes to take its place.

Rabha said: If one says, I swear not to eat *this* bread in case I eat the other, and it happened that he ate the first *(1) erroneously and the second intentionally, he is free (2); if *vice versa*, he is culpable (3); furthermore, if he ate both unintentionally, he is free (4); if both intentionally, it depends on the following: if he had eaten the conditional one first and thereafter the one he prohibited to himself, he is liable (5), and if *vice versa* it is under the category of cases concerning which R. Johanan and Resh Lakish differ; according to him who holds that a doubtful

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* (1) The first, *i.e.* the conditioned *A*, the second, *i.e.* the conditioning one *B*. (2) Because when he eats *A* he forgot all about *B* and the oath has not yet rested upon him, since *B* was not yet consumed by him; hence, he is free from both stripes and sin offering. (3) Because while eating *A* he was aware of his oath, and when consuming *B* he forgot the oath; hence he is liable to an offering for breaking an oath by forgetting. (4) Because he had forgotten the oath already when he ate *A* hence there was no oath at all resting upon him. (5) To stripes, since after having consumed *A* he was aware that *B* was forbidden to him, and the warning was a certain one. (6) Because if he was warned with regard to either *A* or *B*, he has broken his oath intentionally. (7) Even when warned while eating *A*, because the liability to stripes is originally attached only to *B*, hence the warning does not effect. (8) Because one of the breads was necessarily consumed intentionally.

warning is considered, he is culpable (6), while according to the other, who holds that such is not considered, he is free (7). If, however, continues Rabha, he made the two breads dependent on each other—viz.: I will not eat the one if I eat the other, I will not eat the other if I eat this, and thereafter he consumed one intentionally (*i.e.*, he has in mind the oath that he must not eat this in case he eats the other one, but he forgot that he swore the same with regard to the other bread) then he consumed the other one also intentionally (the same as before, but he forgot that he has already consumed the first one), he is free; if, however, he has consumed the first unintentionally (*i.e.*, he forgot that the conditional oath is on *this* bread, though aware of the oath itself and therefore he consumes the second one in the same manner, he is culpable (8); but if he consumed both unintentionally (having forgotten all about the oath), he is free; both intentionally, he is, all agree, culpable for the second one; the first, however, falls into the foregoing category concerning which R. Johanan and Resh Lakish differ. Said R. Mari: there are vows by error and vows by compulsion; how so? If one says: I vow this object if I have eaten or drunk such and such, and then recollects that he did; in like manner if he vows for the future and on forgetting the vow eats or drinks, to such a vow no liability attaches; and there is a Boraitha that just as there are vows by error, there are also oaths by error.

Eipha taught the Tract Sheb'noth at Rabba's college, and Abimi, his brother, asked him: How is it if one swears twice, I have not eaten, I have not eaten, while he did eat? He answered: He is culpable but once; whereupon he said: You are mistaken, since the first oath was already a lie, and the second one is again a lie. He asked further: How is it if one swears not to eat nine and ten (articles), and thereafter he eats ten, without recollecting his oath in between? And he answered: He is culpable for each one severally. Said the other: You are again mistaken, for the oath for the ten does not rest at all, as ten presupposes nine and for the nine he has made a separate oath; but how is it if he swear not to eat ten, and then not to eat nine? Here he is culpable only once. The other rejoined: You are again mistaken, for as soon as he ate nine he broke one oath, and by eating the tenth he breaks the other oath. Said Abayi: In this last case, then, may be a case that Eipha is right —viz.: if one swear not to eat ten, and thereafter not to eat nine; then he ate nine and recollected his transgression, brought

a sin-offering and then consumed the tenth; the tenth is then considered but a half-quantity, and for such one is not liable.

MISHNA *VI.*: Which is false swearing? If one swears that something is different from what it is known by everybody to be, *e.g.*, that a stone column is of gold, that a man is a woman, that a woman is a man; or if he swears to an impossibility—viz.: If I have not seen a camel flying in the air; If I did not see a serpent of the shape of an oil-press; so! . . . If one asks some witnesses: Come to testify for me, and they answer, We swear that we shall not bear you witness; or if someone swears to ignore a commandment, as, *e.g.*, not to make a Sukka, not to take Lulab'be, or not to put on phylacteries; so it is a false swearing punishable with stripes if committed intentionally, and unpunishable if made by error. If he swears, to one and the same loaf of bread, I will not eat it, then, I will not eat it, the former is a vain oath, and the latter an uttered oath; so that by eating it he is liable for uttered swearing; by not eating it he is liable for a vain oath.

GEMARA: Said Ula: Provided it was acknowledged by three persons that this pillar was of stone.

"*If he swore to an impossibility,*" etc. Why does the Mishna use a negative and not a positive expression? Said Abayi: Read it in the positive, if you prefer. Rabha, however, said: It speaks thus: If he says, all the fruit in the world be forbidden to me, if I have not,* etc.

"*I will eat, I will not eat,*" etc. Let us see: since he is liable for the uttered oath, shall he not be liable for the vain one? He *has* pronounced such and why shall he not be liable? Said R. Jeremiah: Read in the Mishna, he is liable for the uttered oath *also.*

MISHNA *VII.*: The provisions regarding uttered swearing apply to males, females; to kindred, non-kindred; to those legally fit to testify as well as to those unfit; to cases before as well as outside the court. The oath, however, must come forth from his own mouth, and its intentional violation is punished with stripes, and its unintentional with a poor and rich-offering. Vain swearing takes place by men as well as by women; by kindred and non-kindred; by those fit to testify and by those unfit; before and outside the court, and the oath must issue from one's own mouth; its intentional violation is attended with stripes,

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* The further development of this discussion will appear in its place in N'dairm.

while its unintentional is unpunishable. In both cases one is guilty if made to swear by others, thus: If he says, I ate nothing to-day, I put on no phylacteries, and another interposes: I adjure you, to which he answers: Amen, he is guilty.

GEMARA: Said Samuel: He who answers amen after an oath is considered as if he pronounced the oath with his lips, as it reads [Numb. v. 22]: "And the women say amen, amen." Said R. Papa in the name of Rabha: There are a Mishna and a Boraitha which seem to teach the same. The Mishna is the next following (viii.): The witness-oath . . . unless they deny before the court; such is R. Mair's view. Then the illustration in the Boraitha: If one said to the witnesses, Come and testify for me, and they answer: We swear that we know of not estimony for you, or, We do not know any testimony, whereto he says, I adjure you, and they answered: Amen, they are liable when they deny it, immaterial in the presence or absence of the court; so R. Mair. Hence, the Boraitha apparently contradicts the Mishna; however, as we said, the Mishna means that they did not answer amen, while in the Boraitha he did so, hence, the answer, amen, is equivalent to pronouncing with one's lips.

Said Rabina in the name of Rabha: From our own Mishna we may infer the same; as in the first part it requires that he must utter it himself, whence it is to be inferred that not through others, and in its last part it states that in both cases if sworn through another, he is liable; does the last part contradict the first? Nay; the last part means when they answered Amen, while the first part does not mean so. But if so, what comes Samuel to tell us? He comes to teach that the Mishna is particular in its statements concerning an uttered oath—viz.: if made by himself, he must pronounce it with his lips, and if by others, he must also utter with his lips Amen.

CHAPTER IV.

RULES AND REGULATIONS CONCERNING THE WITNESS-OATH: WHO IS OR IS NOT RESPONSIBLE THEREFOR; HOW THE PLACE WHERE SUCH IS MADE (WITHIN OR WITHOUT THE COURT) DETERMINES ITS LIABILITY; IF MADE INTENTIONALLY.—THE LAWS OF ADJURATION. —TWO PARTIES OF WITNESSES CONTRADICTING EACH OTHER.—FOR WHICH OF THE DIVINE NAMES AND ATTRIBUTES (WHEN USED IN AN OATH) ONE IS CULPABLE.

MISHNA *I.*: The witness-oath applies to men but not to women, to unrelated but not to kindred, to legally fit to testify but not to those unfit, as such an oath is given only to those fit to testify in the presence as well as in the absence of the court; provided it comes forth from one's own lips, but if from the mouth of others, they are liable only when they deny it before the court; such is R. Mair's view; the sages, however, maintain: Whether it comes forth from one's own mouth or from that of others, they are not liable unless they deny it before the court. Again, the witnesses are liable for an intentional oath, and for an error *in* the oath made while intentionally testifying, but are not guilty when made in error. And what is their fine for intentional swearing? A poor and rich offering.

GEMARA: Whence is this deduced? From what the rabbis taught, it reads [Deut. xix. 17]: "Then shall the two men, who have the controversy, stand before the Lord," etc.; this means the witnesses; but perhaps it means the contending parties themselves? As it reads: "Who have the controversy," hence, the parties are already indicated, consequently, "the men" indicate the witnesses. And should you like to object to this deduction, then we may refer to the analogy of expression "two" mentioned here, and also found in [ibid. 15]: "Upon the evidence of two," where it *expressly* means witnesses, hence, also here witnesses are meant. [And what would be the objection? Lest one say that because it is not written "*and* who have the controversy," the whole verse speaks only of the parties, hence, the analogy of expression.]

There is another Boraitha: "The two men shall stand"

means the witnesses; but perhaps it means the parties ? This cannot be, for do only men and not women come to court? And should you like to object, we may refer you to an analogy of expression; as there "two" means witnesses, so also here [and what would be the objection? Lest one say that it is not customary for a woman to go to court, as it reads [Psalm, xlv. 14]: "Awaiteth the king's daughter in the inner chamber"; wherefore, the analogy of expression].

The rabbis taught: "The two men shall stand" signifies that it is a meritorious act that both parties declare their grievances standing. Said R. Jehudah: I have heard that if the court allows both parties to sit, they may do so, since it is forbidden only that one stand and the other sit; or that one party be allowed freedom in speaking, and the other he asked to speak briefly.

The rabbis taught, it reads [Lev. xix. 15]: "In righteousness thou shalt judge thy neighbor," which means no preference is to be given to either party, as said above. Another explanation of the just-cited verse is: Try always to judge everybody from his better side. R. Joseph taught: This verse signifies that him who is your equal in wisdom and deeds, you shall try to judge fairly.

It happend that Ula b. Eilai had a case in the court of R. Na'hman, and R. Joseph sent word to R. Na'hman: Ula, our colleague, is equal to us in wisdom and deeds; and R. Na'hman wondered what the purpose of the message was; does he mean: I shall flatter him? After some deliberation he said: He must mean I shall give preference to Ula's case over some other cases, or if in his case the evidence will be equally balanced on the two sides, and the opinion of the judges will be dicisive.

Ula said: The point of difference above concerns only the contending parties, while concerning the witnesses all agree that they must stand, as the above-cited verse, "The two men shall stand," signifies; and R. Huna said: The difference concerns only the time of the trial, while at its conclusion the judges, all agree, should sit and the parties stand, as the conclusion is equalled to witnesses and as they are standing according to the above-cited verse, so also must the parties stand.

The wife of R. Huna had once a case before R. Na'hman, and the latter deliberated with himself as to how to proceed. Shall I rise to honor her, then her opponent will remain stupefied, and should I not rise, there is a rule that the wife of a

scholar must be treated in the same manner as the scholar himself. He then helped himself out of the difficulty by instructing his servant, thus: Throw a duckling upon my head as soon as the wife Huna enters, so that I will have to rise anyhow. But did not the master say that at the conclusion of the trial the judges, all agree, are to sit while the parties must stand? (And how could R. Na'hman remain standing when she enters to hear the conclusion)? The answer is: He then sits halfways, as though untying his shoe-laces, and pronounces the verdict.

Rabba b. R. Huna said: If a scholar has a case with one of the common people, the court may invite both to sit down, and if the common man remain standing, it is not necessary to repeat the invitation.

Rabh b. R. Shrabia had a case with an Amharetz (a common) before R. Papa, and the latter invited both to sit down; the messenger of the court, however, came and made the Amharetz to stand up, to which R. Papa said nothing. But why was R. Papa indifferent, could not this stupefy the opposing party? R. Papa thought: I, myself, invited the two to sit, and the act of the messenger the Amharetz may explain as due to the fact that he has not gratified him (the messenger).

Rabba b. Huna said again: If a young scholar has a case with an Amharetz, the former must not sit down before the judge appears, in order that the Amharetz should not think that the scholar came there to prepare his own case and send it to the judge; provided, however, the scholar was not usually ap pointed to sit in court for some other purpose, but if he was, he may sit down, as his opponent will think that he is there for a purpose other than the case.

The same said again in the name of the same authority: If a scholar was aware of a case to which he could be a witness, but it was a humiliation to him to go to that particular court where the judge was inferior to him, he may remain at home. Said R. Sheshah b. R. Idi: This we have also learned in a Mishna, if one finds a sack or a basket on the way and it is a humiliation to him to carry it, he may leave it (in spite of the commandment to return a loss to its owner); but all this, he says, concerns civil cases; as to criminal cases, it reads [Prov. xxi. 30]: "There is no wisdom nor understanding, nor counsel against the Lord," which means wherever there is a case of profaning the holy name, no distinction or honor must be given to any rabbi.

R. Yenai was witness to a case where Mar Zutra was one of the contending parties, in the court of Amemar; and latter invited all, parties and witnesses, to sit down. Said R. Ashi to him: Did not Ula say that only concerning the parties there is a difference of opinion, but concerning the witnesses all agree that they must stand? And he answered: This is a positive commandment; and to honor a scholar is also a positive commandment (inferred by R. Aqiba from the particle *Eth*, the sign of the accusations, written in "*Eth* the Lord thy God thou shalt fear," which means to add the scholar) and the latter commandment is to me of greater value.

The rabbis taught, it reads [Exod. xxiii. 7]: "Keep thyself far from a false speech"; this signifies that the judge must not with his speech advocate either party, furthermore that he shall not enter discussion with an ignorant disciple in a case (so that he might not be mislead by the latter); again, that the judge, being aware that the party is a robber and there being only one witness, must not conjoin with the latter, for in this case the robber may be right; nor must this (conjoining) be done by any other person; that, if the judge notices the witnesses to testify falsely, he shall not say to himself: I will decide the case in accordance with their evidence according to the law and the "collar remain on their neck."

From this verse is further to infer: That if a disciple saw his master err in his judgment, he must not say, "I will wait until he issues his verdict and then I will disclose the error, thereby causing the issue of another verdict, which will have to be done with the acknowledgement of my authority" (but must call his attention immediately). That the master shall not tell to his disciple: It is known to all that I will not lie even if offered 100 manas, but there is one who owes me a *mana*, and I have only one witness, it is but right that you appear in court, so that the defendant might think you, too, a witness, and I will thus get my *mana*, although he does not instruct his disciple to tell a lie, but begs him to stand and say nothing, yet the verse reads, "Keep thyself *far* from false." Furthermore, if the plaintiff claims a mana, he must not claim two, thinking that thereby he will cause the defendant to confess one, which partial confession will make him liable to a biblical oath, so that there will be possible for the plaintiff to include here in the oath also other claims he may have against the defendant; this, too, is prohibited, because "Keep thyself *far* from false." For the same

reason the defendant must not say: Since the plaintiff claims two, and will therefore not confess even the one I owe him in order to avoid the biblical oath in which the plaintiff may include some other claims. From the said verse is further inferred: That, when three persons claim one *mana* from one party, and there are no witnesses, they shall not institute one of themselves as the plaintiff and the other two as witnesses, thereby recovering the *mana* and dividing it among themselves. Again: If two appear before the court, one richly dressed in a cloak worth 100 *mana*, and the other clad in rags, the court must instruct the former to go and dress like his contestant, or to dress him richly like one's self (this, too, is inferred from the verse, because the contrast between the rich and the poor would stupefy latter and also possibly influence the judge).*

It reads [Ezek. xviii. 18]: "And did that which is not good in the midst of his people," which according to Rabh means him who comes to court with a power of attorney, and according to Samuel, him who buys a field on which there are several claims.

"*Such an oath . . . only to those fit*," etc. To exclude whom? Said R. Papa: To exclude a king, and R. Aha b. Jacob said: To exclude a gambler. To him who says "a gambler," so much the more a king, and to him who says "a king" a gambler is not excluded, since biblically he is fit, and only the rabbis have declared him unfit.

"*In the presence as well as in the absence of the court.*" What is their point of difference? The rabbis said in the presence of R. Papa: The theory "Deduce from it, and again from it," in case one thing is deduced from another (*i.e.*, any further provision connected with *A* may be transferred to *B*) is the theory of R. Mair (as explained further on). The opponents of R. Mair, however, hold the theory of "Deduce from it, the rest, however, leave in its place" (*i.e.*, after having transferred the main provision of *A* to *B*, we are to let *B* retain its own character); thus the case of witnesses is inferred from the case of a deposit; as in a deposit one is liable only when swearing himself, so also in the case of witness; again, as in the former case it is indifferent the presence or absence of the court, so also with witnesses; and this is R. Mair's theory just men-

* There are still more significations imputed to this verse, and they have appeared already in Sanhedrin and Maccoth.

tioned. The rabbis, however, who uphold the other theory, argue thus: As in a deposit, he is liable when swearing himself, so also in the case of witnesses; but if one is sworn by others which case can take place only in the presence of the court but not otherwise, we have a case that must retain its own characteristics; and the same is the case when he swears himself, it must be in the presence of the court. Said R. Papa to them: If the rabbis of the Mishna inferred this from the case of a deposit, they would certainly adopt also R. Mair's theory above mentioned; the reason, however, why the rabbis do not adopt it is that they proceed by an inference *a fortiori*—viz.: since one is liable when sworn by others, so much the more he is liable, if he himself swore; and concerning this there is a rule: "It is sufficient that the result derived from inference be equivalent to the law from which it is drawn;" and since the case of being sworn by others must take place only in the court, the same is in the case of swearing himself.

"*Guilty for an intentional oath,*" etc. Whence is this deduced? From what the rabbis taught: In all other cases (concerning an offering) it reads "Escaped his recollection," except this case; hence, this teaches that one is liable for an intentional oath, just as for an unintentional.

"*For an error in intentional testifying,*" etc. What instance could illustrate this? Said R. Jehudah in the name of Rabh: If one says, I know this oath to be prohibited, but I do not know that the liability therefor is an offering.

"*But they are not liable when made in error.*" Shall we assume that this Mishna decides the question discussed above by R. Kahana and R. Assi, concerning the saying of Rabh made in the college? Nay; it was necessary for Rabh to teach them that, since otherwise one might say that the decision of the Mishna concerns only that case with regard to which the Scripture does not mention "Escaped," etc. (*i.e.*, the case concerning witnesses), but it does not apply to an uttered oath regarding which "Escaped" is mentioned, so that any error entails liability; therefore he came to teach that even in such case there is no liability.

MISHNA *II.*: How does a witness-oath come about? If someone said to two: Come and bear witness for me, and they say, We swear that we know no testimony for you, or they said, We know nothing to testify for you, whereupon he answers, Do you swear, and they say, Amen, they are liable. If he repeated

this five times outside of court, and upon coming before the court they confessed and testified, they are free; but if they deny it also here, they are guilty for each time severally. If, however, he repeated his adjuration five times in presence of the court and they denied, they are liable but once. Said R. Simeon: What is the reason? Because they are not able to retract the previous statement and to testify. If the two denied simultaneously, they both are guilty, but if successively, only he who denied first is gulity, while the second one is free. If one of them denies and the other confesses the truth, the denier is guilty. If there were two parties of witnesses and both denied successively, the two are guilty, since the testimony could have been established by either one.

GEMARA: Said Samuel: If the witnesses saw one running after them and said to him: What are you running for, we swear that we know no testimony for you, they are free, as liability attaches only to the case when they heard him adjuring them.

What news does Samuel come to teach us? Is this not plainly stated in the last part of Mishna V.—viz.: "They must hear it from the mouth of the plaintiff"? Samuel finds it necessary to teach the case where he runs after them, lest one say that running he considered equivalent to direct asking. But even this point is already stated in our Mishna—viz.: "If one *said*," which renders it obvious that if he did *not say* it is not considered? Nay; if not for Samuel's statement, it could be said that the expression of the Mishna is merely usual language; and it seems, indeed, to be no more than that, for the same expression is used in the next chapter concerning the oath of a depositary, and there the "said" can be meant *only said*, as it reads [Lev. v. 21]: "If he lie unto his neighbor," where there can be no difference whether one is asked or not; hence, the expression there is not particular (therefore Samuel teaches that in our Mishna the language is particular).

There is a Boraitha in accordance with Samuel: If they, seeing someone coming after them, exclaimed: What are you following us for, we know no testimony for you, they are free; however, when this took place with regard to a deposit, they are liable.

"*If he repeated this adjuration five times*," etc. Whence is it deduced that liability attaches only to a denial made in the presence of the court? Said Abayi, from [ibid., ibid. 1]: "If he do not tell it, and thus bear iniquity," which implies only

such a place where the telling is effective, so as to make one pay upon it, but not if told in any other place. Said R. Papa to Abayi: According to your theory no oath should be considered if made outside the court! This could not be borne in mind, as there is a Boraitha: From the expression [ibid., ibid. 4]: "To anyone," which makes one liable for each oath; now, if an oath made outside the court be not considered, how could one be liable for each, after it has been stated in our Mishna that even for five times he is liable but once, and R. Simeon gave the reason therefor? Infer then therefrom that an oath is considered even when made outside the court, but a denial—only when in the court.

"*If the two denied simultaneously*," etc. But how is it possible to ascertain with precision the simultaneity of their minds? Said R. 'Hisda: It is in accordance with R. Jose the Galilean, who says that it is possible. R. Johanan, however, maintains that this may also be in accordance with the rabbis, who hold that such is not possible, but our Mishna treats of the case where the two denied in an interval of a single word. Said R. Aha of Diphti to Rabina: Let us see; the length of an interval of a single word is estimated as the interval it takes a disciple to greet his master, and here they have to say: We swear that we know no testimony for you, which sentence consists of *several* words; and he answered: It means that each of the witnesses begins his testimony yet before his preceding witness has completed his.

"*Both denied successively*," etc. Our Mishna is not in accordance with the Tana of the following Boraitha: If one adjured *one* witness, he is free; R. Elazar b. R. Simeon, however, holds him liable. Now, shall we assume that the point of difference here is that one holds one witness serves only to cause an oath to the other party, and that the other holds that he can also cause the payment of money? But how can you reason thus? Does not Abayi say further on that all agree that only one witness is necessary in the case where the defendant is suspicious regarding an oath? Therefore, it must be said that all agree that one witness can cause only an oath but not payment, and the point of their difference is as follows: One holds that a thing which causes payment is itself considered as money, and according to the other it is not considered such.

What has Abayi said? He said as follows: All agree concerning *one* witness in the case of a suspected wife; likewise all

agree concerning two witnesses in same; and furthermore there is a difference of opinion concerning the same case. All agree concerning the law of one witness, as well as concerning the law regarding the case where the opposing party is suspicious of perjury. All agree concerning one witness in the case of a suspected wife that he is liable in case he was aware of the fact that the woman has sinned and refused to testify, as here the law trusts him to testify [Numb. v. 13]: " And there be no *witness* against her," hence, his refusal makes the husband pay; and all agree concerning witnesses that they are free, if they refused to testify that he warned his wife against staying alone with so and so; as their testimony would only cause not a direct payment, since apart from their testimony there must be yet another testimony by two witnesses that she has actually stayed with another one. And there is a difference concerning witnesses in such a case; if they were witnesses regarding her staying alone with so and so and they refused to testify; in which case if they did testify, they would only necessitate the drinking by her of the bitter water, when for fear she may confess, and only then the husband would be free from paying her marriage contract; it is regarding this that one holds that a thing causing the payment of money is itself considered as money, and therefore they are liable to pay, while the other does not consider it such, therefore they are free. Furthermore, all agree concerning a case where there is but one witness and one of the parties is suspected of perjury, that the witness is liable; likewise they all agree concerning one witness in a case similar to that, which happened in the court of R. Aha, where one of the parties robbed a piece of metal (Last Gate, p. 93).

(Says the Gemara): Let us see how was the case where one party is suspected of perjury? Who was suspected? If the borrower was so, and the lender says to the witness: If you would testify I should surely get the money, for my opponent is not fit to swear, hence, the oath will return to me so that *I* would swear and get the money; then the witness could retort: Who is sure that you will swear? Therefore we must say that both the parties were suspected, and the Master said elsewhere that in such a case the oath applies to him who has to swear first, and as he is not fit to swear he must pay.

R. Papa said: There is also a case concerning a witness who refuses to testify to the death of a husband; in one case all agree that he is liable, and in another case all agree that he is

free; the latter is illustrated thus: If he told the fact to the widow, but refused to testify before the court, he is free; because there is a Mishna: If a woman said that her husband is dead, she is trusted and may remarry (hence, his refusal to testify is not harmful to her); while the former case is illustrated: If he refused to tell the fact even to the wife herself. Now, shall we infer from this that he who makes witnesses to swear in a case of real estate, it is considered, and they have to pay (as a marriage contract is collected from real estate only, and there is further on a question concerning this point)? Nay; perhaps in the hands of this woman it was already movable property, in which case she may collect her contract therefrom.

"*If one of them denies and the other confesses,*" etc. To what purpose is this stated? It has been said already above, that even if the second denied after the first he is free, so much the more so if he confessed? It means when both have denied, but one has instantly thereafter retracted and confessed; and it comes to teach us that the confession made in an interval of one word is considered as though no denial was made. But this is correct only according to R. 'Hisda, who has explained our Mishna in accordance with Jose the Galilean; then the first part teeaches that exact ascertainment is possible, and the second part teaches that the one-word interval is equivalent to a word. But according to R. Johanan both parts teach the same? It was necessary, as the last case speaks of denial and confession, while the first, only of denial.

"*If there were two parties,*" etc. It is correct that the second party be liable, because it denied after the first had done so (hence, its refusal is a direct harm); but why should the first party be liable, when there is yet a second party who is fit to testify? Said Rabina: It speaks of a case where the witnesses of the second party were related to one another on their wives' lines, and at that time when the first party denied, the wives of the other party were in the agony of death; and lest one say that in such a condition they are considered dead and hence their husbands are fit to be witnesses and consequently the first party is free, it comes to teach us that the agony of death is not to be taken into account, as they may yet recover.

MISHNA *III.*: If one says: I adjure you that you come and bear me witness that I have in the possession of so and so a deposit, a loan, a stolen or lost object, to which they reply: We swear that we know no testimony to you, they are guilty

but once. But if their reply be: We swear that we are ignorant of your having in the possession of so and so a deposit, etc., they are guilty for each severally. I adjure you that you testify for me that I have deposited by so and so wheat, barley and rye, to which they answer: We swear that we know no testimony for you, so they are guilty but once. But if their answer be: We swear that we are ignorant of your having deposited by so and so wheat, barley and rye, they are guilty for each one severally. I swear you to witness that so and so owes me damages, half damages, double payment, or four and five-fold payment; that so and so insulted my daughter, seduced my daughter; that my son struck me, that my neighbor wounded me; set fire to my stag on the day of atonement, they are guilty (in case they deny).

GEMARA: The schoolmen propounded a question: How is the law, if one adjure witnesses in a case of fine? This question is not according to R. Elazar b. R. Simeon, who says elsewhere that such witnesses are considered even after the defendant has confessed that he was fined; but is according to the rabbis, who declare the defendant free even when, after his confession, witnesses testified; and it seems that the rabbis of that statement are in accordance with the rabbis of the Mishna said above, that a thing causing money is not itself considered money. Now, shall we say that the refusal of the witnesses is not of direct harm, since the defendant has the choice to confess and then he is free; or, as he has not yet confessed, there is a claim of money and their refusal is of direct harm? Come and hear the statement of our Mishna: "To testify half-damages," which is a fine and nevertheless he is liable. But is there not one who says that even half-damages are according to law and not fine? (Hence, nothing can be inferred from here.) But again, does not the Mishna mention double-amount, which is surely fine? Yea; but the fine here is the *doubling*, while the Mishna finds him liable because in the doubling is included the *amount* stolen; and the same may be the case with four and five-fold. But is not the money which a seducer or insulter has to pay, not a fine, and yet the Mishna treats of it? Maybe the Mishna exacts this as indemnity for the shame and loss of value, and this indemnity is not a fine. But if all in the Mishna is money and not mere fine why should it repeat all these cases? The Mishna comes in its first part to teach us by the way that half-damages are considered money, and in its last part that if

one set fire to a stag on the day of atonement, he is liable to pay, although his act is in the category of *Korath*, which is against R. Neheunia b. Hakana (and all the other things are treated of only on account of this connection).

Come and hear the following: I adjure you to testify that so and so has spread abroad an evil name on my daughter [Deut. xxii. 14], they are liable (if they refuse to do so); but if the man who has spread the evil name, confessed before the court that he did so falsely, he is free from paying the 100 shekkels (as according to the law he who confesses in a case subject to fine is free), hence, we see that this money is fine and they are liable none the less? It may be said that this Mishna is in accordance with R. Elazar b. Simeon, quoted above, who holds one liable even when the witnesses testify after his confession. But is not the last part which holds one free if he confessed on his own accord, in accordance with the rabbis? Nay; the whole Mishna is in accordance with R. Elazar, and it means to say that there can be found no case where one be free from payment (of the 100 shekkels) unless there were no witnesses at all and he confessed.

MISHNA *IV.*: If one says: I adjure you to bear me witness that I am a priest, a Levite, not the son of a divorced woman, nor one who has performed *Chalitzah;* that so and so is a priest, a Levite, not the son of an aforesaid woman; that so and so insulted or seduced someone's daughter; that my son wounded me, that my neighbor wounded me or set fire to my stag on Sabbath, they are free.

GEMARA: They are free because his cláim concerns a third person; but how is it if he made them to swear that so and so owes a *mana* to someone, they would be liable? And does not the Mishna state that they are not liable unless made to swear by the plaintiff himself? Said Samuel: It means that he has from the latter a power of attorney. But did not the sages of Nahardea say that a judgment is not given on movables? Yea; but this is in case he denies, but if he does not deny, a judgment is given.

The rabbis taught: Whence do we know that the verse [Lev. v. 1], quoted above, speaks of a money-claim only? Said R. Eliezar: From the analogy of expression "or" and "no" found here, and also in the case of a deposit, and as there it treats of a civil case, so also here. But is not the same expression found in [Numb. xxxv.] concerning a murder, *i.e.*, a criminal and not

a civil case? We infer from these expressions, a case which implies an oath, while in that (of Numb.) there is no oath. But again, are not such expressions used in connection with a suspected woman in which case there is an oath, and yet it is not a civil case? There is used in this last case a priest, wherefor we infer but like cases where there is an oath but not a priest. R. Aqiba, however, said: It is inferred from [Lev. v. 5]: "By any one of *these*," which means for some of them he is, while for others he is not, liable. How so? If it was a civil claim, he is liable, but not for something else. R. Jose the Galilean said, it reads [Lev. v. 1]: "And he is a witness, since he hath either seen or knoweth," which signifies such cases where he may be liable by seeing only or by knowing only; how so? I have lent you a *mana* in the presence of such and such witnesses, who may come and testify, this is a case of seeing only; and by knowing only, as in case one claims that so and so has confessed in the presence of such and such witnesses that he owes me a *mana*. R. Simeon said: We infer this from the case of deposit: as there it is only civil, so also here; furthermore we may draw this by an inference *a fortiori*—viz.: a deposit, with regard to which male and female, relatives and unrelated, fit and unfit to testify, are equal, and there is a liability for each oath, be it made in the presence or absence of the court, is nevertheless but a civil case—the case of witnesses where the foregoing classes are not equal and where the liability attaches to but one oath and only when made in the presence of the court, should so much the more be only civil. And lest one say: The case of witnesses is more rigorous, as there is here a liability for an intentional and for being sworn by others which is not the case concerning a deposit, to this there is an analogy of expression: "Sin" found here and also in the case of a deposit, which justifies the inference that as the latter is civil, so also is the other case.

R. Hamnuna was once in the presence of R. Jehudah, who propounded a question. If one says: I have lent you a *mana* in the presence of so and so and so, and the witnesses saw the parties from the outside without being seen by the defendant, how is the case? Said R. Hamnuna: It depends on the form of the defendant's answer; if he says that such has never occurred, he must be recognized as a liar; but if he says that he did take money but it was his own, then there will be no use in the witnesses' testifying to have seen this! Rejoined R. Jehudah: Your place may be in the college, as you enlighten your master.

There was one claiming: I lent you a *mana* here near this pillar; and the answer was: I have never in my life passed near this pillar. Witnesses, however, came and testified that he once urinated near that pillar; said R. Na'hman: He is then to be regarded a liar. Said Rabha to him: From a thing where one is not particular, his attention may wander away; this may have been the case with this defendant; he paid in that case no attention to the pillar.

R. Simeon said: As in the case of the deposit, etc., this statement was ridiculed in the west. Why? When R. Papa and R. Jehudah b. R. Jehoshua came from college, they said: The people of the west have ridiculed R. Simeon's last statement—viz.: Lest one say that the case of witnesses is more rigorous, etc.; saying: To what purpose did he need this after he had used an analogy of expression? But why should it be ridiculed? Perhaps he had put this point before, but not after, he established the said analogy?* Because it was known that the Scripture has made mention of a witness-oath in connection both with an uttered oath, and with the case of defiling the Temple and its holiness in order to indicate that concerning a witness-oath "Escaped his recollection" is not stated (whereas it is stated regarding the others) in order to make one liable to a sin-offering even for such an *intentional* oath.

MISHNA *V.*: If one says: I adjure you to bear me witness that so and so has promised to give me (as a present) 200 zuz, and did not, they are free, as they are guilty only in the case when money is required as a deposit. I adjure you that as soon as you become cognisant of testimony for me, you come and testify for me, they are free, since the oath preceded the act of testifying. When one says while standing in synagogue: I adjure you to bear me witness if you are cognizant thereof, so they are free unless he especially address his challenge to them. When one says to two: I adjure you so and so that, if you are cognisant of testimony in my favor, come and do so, to which they say: We swear that we know nothing for you, while in reality they do know, but only indirectly, or one of them is found to be a relative or an unfit, they are free. If one sends his servant to adjure them; or the defendant says to the wit-

* In the text is also repeated what Rabha b. Aithi said above to contradict R. Simeon, which is followed again by a discussion. But it being very complicated and apparently offering nothing new, we omit the few lines.

nesses: I adjure you to testify for him if you know any testimony, they are free, for they must hear it from the mouth of the plaintiff.

GEMARA: The rabbis taught: I adjure you to bear me witness that so and so promised me as a present 100 zuz and did not give them to me, they are free; lest one say that they should be liable, the analogy of expression "sin" used both concerning a deposit and here, teaches that as in the former the deposit was given, so also in this case.

"*As soon as you become cognisant,*" etc. The rabbis taught: Lest one say that in such a case they should be liable, it reads, "If he is a witness, or hath seen or knoweth," which signifies that the act of testifying must precede the oath and not *vice versa.*

"*While standing in synagogue,*" etc. Said Samuel: Even if his witnesses were among them. Is this not self-evident? He means to say: Even if he was standing beside them, and lest one say that in such a case it is considered as though he talked directly to them, he comes to teach us that it is not so.

There is a Boraitha in support of Samuel: If one saw a crowd standing, among whom he recognized his witnesses and said: I adjure you to come and testify for me, lest one say that they are liable, it reads, "And he is a witness," which signifies that the witnesses must be directly addressed, which he did not do. If, however, he said: I adjure you all who are standing here, to testify for me, they are liable, as here he addresses the witnesses directly.

"*When one says to two,*" etc. The rabbis taught: Lest one say that in such a case they should be liable, it read, "He shall bear his iniquity," which signifies that only then when they are fit to tell (on their own knowledge).

"*If one sends his servant,*" etc. The rabbis taught: Lest one say that in such a case they should be liable, therefore the just-cited verse. But how is this to be understood? Said R. Elazar: The word "not" (Hebrew, *Lo*) is spelled here with a redundant *vahve* and *lo* (with a *vahve*) means him (dativus) which is to be interpreted thus: If he will not tell to him, to the party himself, he bears iniquity; but if he will not tell to a stranger, he is free.

MISHNA *VI.*: If one says: I adjure you, I impose upon you, I bind you (by oath), so they are guilty. If, however, he says: By heaven and earth, they are free; by any of the divine

names, or by some other divine attribute, so they are guilty. Blaspheme applies to them all, according to R. Mair, but not according to the sages. Whoever curses his father or mother by any of the above divine names, is guilty, so holds R. Mair, while the sages declare him free. Whoever curses himself or his neighbor by any of these transgresses a negative command. (If one says to the witness): Smite you God, or: May the Lord God smite you, so is this a biblical swearing. If he says (on your testifying): God smite you not, but bless you, may He bestow but good upon you (and they say: Amen), R. Mair finds them guilty, while the sages declare them free.

GEMARA: "*I adjure you,*" etc. How is this to be understood? Said R. Jehudah: Thus, I adjure you with the oath written in the Torah, I impose upon you with the commands of the Torah, I bind you with the bonds of the Torah. Said Abayi to him: According to you, how should be understood the Boraitha of R. Hyya: "For I chain you" they are liable! Do we find "chaining" in the Torah? Therefore, said Abayi, it means to say thus: I adjure you with an oath, I impose upon you with an oath, I bind you with an oath, I chain you with an oath.

"*Adonai,*" etc. Shall we assume that *chanun* and *rachum* (mentioned in the Mishna among the names to swear by) are also divine names? If so, then there is a contradiction from the following: There are names that may be erased, and others that must not; the latter are: *Eil, Eloëchu, Eloîm, Eloëchem, Eiëh asher Eieh, Aleph Daleth, Yah, Shadai* and *Zebaoth;* but *Hagodal, Hayibor, Hanora, Haädir, Hachazak, Haämatz, Haäzaz, Chanun, Rachum, Erech-apäim, Rabh-chessed** may be erased; we see thus that *chanun* and *rachum* are not divine names? Said Abayi: The Mishna means to say, I adjure you by him who is all favor, or: all merciful. Said Rabha to him: If so, let him be liable for adjuring one by heaven and earth, as you could explain it to mean: by him to whom heaven and earth belong? This is no comparison; if you say, "by him who is all favor," etc., so as there is none but the Almighty who is such, it certainly means Him, but heaven and earth as separate existences, cannot be explained as belonging.

The rabbis taught: If one writes *Aleph lamed* (the first letters

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* The divine names, from *Eil* till *Zebaoth* inclusive, are known, while those from *Hagodal* till Rabh-*chessed* inclusive, mean in order as follows: The Great, Mighty, Awe-inspiring, Glorious, Strong, Omnipotent, Powerful, Gracious, Merciful, Long-suffering, and Abundant in beneficence.

from Eloîm), or *Yah* from *Jehova*, it must not be erased; but *Shin daleth* from *Shadai*, or *Aleph daleth* from *Adonai*, *Zadik beth* from *Zebaoth*, may be erased. Said R. Jose: The whole word *Zebaoth* may be erased, for this name applies only to Israel, as it reads [Exod. vii. 4]: "And bring forth my armies (*Zebaothai*), my people, the children of Israel." Said Samuel: The Halakha does not prevail with R. Jose.

The rabbis taught: All the prefixes and suffixes of the divine names may be erased, *e.g.*, in *b'adonai*, *badonai*, *meadonai*, the initial letters (which are prefixes) may be erased; in like manner in *Eloēchu*, *Eloēnu Eloēēm* the last syllables (which are suffixes) may be erased. Anonymous teachers, however, say: They must not be so, for they are already sanctified by the holy name. Said R. Hana: And so the Halakha prevails.

All the divine names found in the Torah in connection with Abraham, are holy, except that of [Gen. xviii. 3]: "And he said, my Lord," which was addressed to an angel. 'Hanina, the nephew of R. Jehoshua, and R. Elazar b. Azaria in the name of Elazar the Madai say that even this name, too, is holy. (Now, what was said in the name of R. Jehudah b. Rabh that hospitality is considered greater than the reception of the glory of the *Shechina*, is in accordance with these two.) Furthermore, all the names found in connection with Lot, are common, except [ibid. xix. 18, 19]: "Oh, not so, my Lord; (*Adonai*) thy servant hath found grace in thy eyes, and thou hast magnified thy kindness," etc., and who but God can save? Again, all names in connection with Nob'oth * are holy, those in connection with Micha [Jud. xvii.] are common. R. Elazar, however, said that the names with Nob'oth are holy, but those with Micha are partly holy and partly common, namely *El* is common and *Yah* is holy, except [ibid., ibid. 31]: "*Eloïm*," which though beginning with *El*, is holy. All the names in connection with the Vale of Benjamin [ibid. xx.] are according to R. Eliezar common, and according to R. Jehoshua they are holy. Said R. Eliezar to him: How can they be holy when He has not fulfilled his promise? Said R. Jehoshua: He has fulfilled His promise, but the people there did not understand what was said to them; a proof to this you find in the fact that after they had comprehended it, they conquered, as it reads [ibid., ibid. 28]: "And Phineahas, the son of Elazar . . . stood," etc. The

* I Kings xxi. 3.

name *Shelomah* wherever mentioned in Solomon's Songs is holy [Song, i. 1]: "*Le-Shelomah*" means, to the king to whom peace belongs; except [ibid. vii. 12]: "Thine, O Solomon." According to others [ibid. iii. 7]: "The bed which is Solomon's," is also common. Wherever in Daniel the word king is mentioned, it is common except [Sam. ii. 37]: "Thou, O king, art a king of kings, to whom the God of heaven hath given kingdom, power, and strength, and honor." According to others also [ibid. iv. 16]: "My Lord! . . . for those who hate thee"; for, to whom did Daniel address this? Surely not to Nebuchadnezzar, because by so doing he would curse Israel, who were the haters of the same; hence, he must have addressed it to God. The first Tana, however, maintains that enemies exist only to Israel, but other nations have no enemies.

"*Or by some other attributes*," etc. There is a contradiction [Numb. v. 21]: "The Lord then make thee a curse (*olah*) and an oath"; to what purpose is this repeated, after the beginning of the verse reads: "And the priest shall charge the woman with an oath of imprecation (*olah*)"? Because, it reads [Lev. v. 1]: "The voice of adjuration (*olah*)," where it means an oath, so also here it means an oath; and as there it means "with the holy name," so here, too, it means so. Hence we see that *olah* means an oath, and the Mishna says that "Smite you God" is an *olah* written in the Torah? Said Abayi: This presents no difficulty, the cited discussion is in accordance with R. Hanina b. Aidi, which our Mishna is in accordance with the rabbis, as we have learned in the following Boraitha. R. Hanina b. Aidi said: As it reads "Swear and not swear, curse and not curse," we must compare curse to swearing; just as an oath means by the holy name, so also not to swear means by the holy name, and the same is with curse and not curse. But let us see; what is the reason of the rabbis' view? If they uphold this analogy, then let them require the unique holy name (*i.e.*, *Jehovah*) to any oath; and if they do not uphold this analogy, whence do they deduce that *olah* means an oath? From the following Boraitha: The expression *olah* means an oath, and it likewise reads in the above-cited verse "And the priest shall charge the woman with an oath of *olah*." But as it reads here "with the oath of *olah*," must we not say that *olah* itself is not an oath? It means to say that the word *olah* comes together with an oath only. And whence do we know that oath alone should be treated as if conjoined with *olah?* From [Lev. v. 1]: "The

voice of an *olah*" (which word voice would be superfluous, as *olah* alone means also an oath), therefore it is to be interpreted thus: He hears either a voice alone (without an *olah*), or an *olah* alone (without an oath).

R. Abuhu said: Whence do we know that *olah* means an oath? From [Ezek. xvii. 13]: "And bound him with an oath (*olah*)"; furthermore, it reads [II Chron. xxxvi. 13]: "Who had made him swear by God." There is a Boraitha: The word *orar* embraces ban (*nidui*), curse (*kelabah*), and oath (*sheb'uah*); ban—from [Jud. v. 23]: "Curse (*orur*) ye Meroz," etc., concerning which Ula said: He placed Meroz under ban with 400 trumpets; curse—from [Deut. xxviil. 13]: "And these shall stand for the sake of the curse (*kelabah*)," and [ibid., ibid. 15]: "Cursed (*orur*) be the man"; finally, oath—from [Josh. vi. 26]: "And Joshua adjured . . . saying cursed," etc.; and also from [I Sam. xiv. 24]: "And Saül adjured the people, saying, cursed."

R. Jose b. Hanina said: *Amen* embraces oath, acceptance, and confidence; oath—from [Numb. v. 22]: "And the woman shall say amen, amen"; acceptance—from [Deut. xxvii. 26]: "Cursed be he that accepteth not this law . . . and all the people shall say, amen"; and confidence—from [Jerem. xxviii. 6]: "Said Jeremiah the Prophet, amen, may the Lord do so."

R. Elazar said: Nay means an oath, and yea means also an oath. (Says the Gemara): It is correct that Nay means an oath, as it reads [Gen. ix. 15]: "And the waters shall no more (*V'lo*) become a flood," and [Isa. liv. 9]: "As I have *sworn* that the waters of Noah should no more (*V'lo*)"; but whence do we know that yea is an oath? This is merely common sense: if Nay is an oath yea is one, too. Said Rabha: Provided he says each twice; nay, nay, or yea, yea; and this is inferred from the above cited verse [Gen. ix.] where no (*V'lo*) is written twice, and as Nay must be said twice to become an oath, so also yea.*

"*Curses himself or his neighbor*," etc. Said R. Janai: Concerning this statement, all agree that he transgress thereby a negative commandment; concerning one's self it reads [Deut. iv. 9]: "Only take heed to thyself, and guard thy soul"; and we have seen above that such an expression means a negative commandment; and concerning his neighbor, it reads [Lev. xix. 14]: "Thou shalt not curse the deaf."

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* Concerning blasphemy repeated here, see Sanhedrin, Chap. VII., Mish. 8.

"*Smite you God,*" etc. R. Kahana, while sitting before R. Jehudah, repeated the Mishna in its own language, and he said to him: Change the language and use it in the third person. It again happened that one of the rabbis while sitting before R. Kahana read [Psalms, lii. 7]: "God will also destroy thee," etc., the whole verse, and R. Kahana said to him: Read it in the third person. And the two cases are cited here, lest one say that in a Mishna it is allowed to change the language but not in the Scripture.

"*God smite you not,*" etc. But we know that according to R. Mair's theory we do not infer from a negative rule a positive one; reverse then the order of the names in the Mishna. However, when R. Itz'hak came from Palestine he taught the Mishna as it is. Said R. Joseph: Now that we see that in Palestine, too, the Mishna is taught as by us, the foregoing difficulty must be resolved thus: R. Mair's theory that we are not to infer yeas from nays, concerns only civil cases, but concerning criminal cases he, too, holds that we do. But is not the case of a suspected woman a crime, and R. Tan'hum b. 'Hakhinui said: In this case it reads [Numb. v. 19]: "Then be thou free" to show that if it were not expressly stated we would not infer? Hence, even in criminal cases we do not infer, wherefor we must say that R. Mair's theory applies also to crimes and the order of the names in the Mishna is to be reversed. Rabina opposed from a Mishna that places under the category of capital punishment him who enters the sanctuary while he is intoxicated, and this is inferred only from the Scripture's prohibiting one to enter in such a condition, and R. Mair does not oppose in this case? Therefore we must say that concerning crime he holds his theory, and the difficulty regarding the suspected woman is to be resolved, thus: it is a case where money, *i.e.*, a civil matter, is also concerned—viz.: in connection with her marriage contract.

CHAPTER V.

RULES AND REGULATIONS CONCERNING THE DEPOSITORY-OATH: WHO IS OR IS NOT FIT TO TAKE IT; WHERE THE DENIAL OF THE DEPOSIT BY OATH MUST TAKE PLACE; THE CONDITIONS DETERMINING THE LIABILITY TO BE EITHER ONE OR FOR EACH ARTICLE SEPARATELY; IN WHICH RESPECT SUCH OATH IS MORE RIGOROUS THAN THE WITNESS OATH.

MISHNA *I.*: The depository oath concerns men and women, non-kindred and kindred, those fit to testify and those unfit, cases within the court and outside thereof, provided it comes forth from one's own mouth, but if through that of others, he is not liable unless he denies it before the court; such is R. Mair's view, while the sages teach: Regardless of whether it comes from one's own mouth or from that of others, he is guilty so long as he denies it. But one is guilty for willful perjury and willful denial of the deposit when ignorant of the liability; not so, however, if he was mistaken concerning the oath only. And what is the fine attached to a willful oath? A trangression offering in the value of two shekkels. How does the oath concerning deposits take place? When one says: Give me my deposit that I have in your possession, and latter replies thereto: I swear you have nothing with me, or merely: You have nothing with me, whereupon the former says: I adjure you, and this answers: Amen, and so he is guilty. If the plaintiff adjured him five times either before court or outside and he denied it by oath every time, so he is guilty for each time severally. R. Simeon said: The reason is that he had ample possibility to confess the truth. If five people require of him in the same time, saying: Give us the deposit we have in your possession, and he says: I swear ye have nothing with me, so he is guilty but once. But if he says: I swear that thou hast nothing with me, nor thou you, nor thou, so he is guilty for each one severally. R. Eliezar says: Provided he make the oath last. R. Simeon says: Provided he accompany each statement with the words I swear.

If one says: Give me the deposit, the loan, the stolen and

lost, that I have in your possession, he replies: I swear that you have nothing with me, he is guilty but once. If, however, his reply be: I swear that you have nothing with me, either deposit, or loan, or the robbed and lost, so he is guilty for each one severally. The same is the case with wheat, barley, and if he denies all with one oath he is guilty but once, and if he repeated " I swear " with each one, he is liable for each. R. Mair says: Even if he required the things in the singular, the other one is guilty for each one severally. If one says: You have violated or seduced my daughter and he replies: I have done neither the one nor the other, I adjure you whereto he says: Amen, so he is guilty. R. Simeon holds him free, for one does not pay fine on his own confession. To which it was objected: Although upon self-confession one pays no fine, yet he must pay indemnity for shame and loss of value. You have stolen my ox; I have not stolen him; I adjure you, the other one: Amen, so he is guilty. But if the latter says: True, I have stolen your ox, but not slaughtered nor sold him; I adjure you; Amen, so he is free. Your ox has killed mine; He did not; I adjure you; Amen, so he is guilty. Your ox has killed my slave; He did not; I adjure you; Amen, so he is free. You have bruised me and wounded me; I have neither bruised nor wounded you; I adjure you; Amen, so he is guilty. But if the slave says to his master: You have blown out my eye or tooth, and latter replies: I have done to you neither the one nor the other; I adjure you; Amen, so he is free. This is the general rule: Whenever one has to pay damages on self-confession, he is (in case of perjury) guilty, but whenever he has not to pay on self-confession, he is free.

GEMARA: R. A'hra b. Huna, R. Samuel b. Rabba b. b. 'Hana and R. Itz'hak b. R. Jehudah have been learning the Tract Shebaoth at Rabba's college; and when R. Kahana met them he asked: What is the law when one has intentionally made a depository oath in spite of a warning, is he liable to a sin-offering or not? Shall we assume that, as this law to bring a sin-offering for an intentional oath is novel, there is no difference whether there was warning or not, or this law holds good only when there was no warning, and if there was, he is subject to stripes and not to a sin-offering, or to both? And they answered: This we have learned in our Mishna; the depository oath is more rigorous, as stripes apply to it when intentional, and a trespass-offering for two shekkels when unintentional. Now, as

it states stripes, it must be that he was warned, and no offering is mentioned; and concerning the rigorousness it may be said that one is pleased to bring a sin-offering instead of getting stripes. Said Rabba b. Eithi to them: This is in accordance with R. Simeon, who holds that an intentional depository-oath cannot be atoned for, but according to the rabbis who maintain that it can, he must bring an offering also. Said R. Kahana to them: Leave out the Boraitha cited by you, as I taught it Thus; it makes no difference whether it was intentional or unintentional, he is liable to a trespass-offering for two shekkels; and the rigorousness is that for any other oath he may bring a sin-offering in the value of a *δανικος*, while here it must be in the value of two shekkels. But then, why did R. Kahana resolve his question from here? Because this may be a case where there was no warning.

According to another version R. Kahana adduced the following Boraitha: No liability attaches to an unintentional oath; and what is the liability of an intentional? A trespass-offering for two shekkels. Does it not mean a case where there was warning? Nay; it may mean one without warning. Come and hear another Boraitha: The comparison with the offering of a Nazarite cannot be drawn here, as a Nazarite who defiles himself gets stripes in addition, while to a depository-oath stripes do not apply; now, since it states that he does get stripes he must have been warned, and nevertheless it states that to a depository-oath stripes do not apply, whence it is to be understood that an offering is required in this case? Nay; it may be said that it means that stripes do not suffice without an offering. But if such be the case, the Nazarite who gets stripes must not bring an offering any more; is it not expressly written that he *is* liable to an offering? His offering is not for his transgression, but for enabling him to continue in his state of a Nazarite in purity.

R. Kahana's question from above was recited before Rabba and he said: From this it may be inferred that, if he was not warned by the witnesses, and they testify, he is nevertheless liable to a sin-offering; but if such a case happens in civil law, his denial would count for nothing, and there are witnesses and he must pay; why then shall he in this case be liable to a sin-offering? (Says the Gemara): From Rabba's question we may conclude that his opinion is that he who denies a debt in spite of witnesses is not subject to a biblical oath. Said R. 'Hanina to Rabba: The following Boraitha supports your opinion. It

reads [Lev. v. 22]: "And lie concerning it" to exclude the case when he confesses this to one of the brothers or partners, "swear falsely" to exclude the case where there were documents or witnesses. And he answered: If you have in the Boraitha no other support but this, it is no support to me at all, as this Boraitha is to be interpreted thus: If the defendant says, I have borrowed from you but not in the presence of witnesses, or not on any document (hence, the Boraitha has in view not denial but confession); and this interpretation is necessitated by the expression of this Boraitha "To one of the brothers"; because how was the case? If he confessed the half of the amount, then there is a complete denial of the other half; thus we must say that the confession to one of the brothers means that the denial was not concerning the amount, but springing from his assertion that he made the loan of *one* of the brothers only, so that it is but a denial of words, and as the first part of the Boraitha means a denial of words and not of the amount, so also the second part.

Come and hear. It was said above: He is not liable for its unintentional; and what is the liability for an intentional? A trespass-offering, etc. Shall we not assume that it means a case where there were witnesses warning him? Nay, it means that there were no witnesses. Come and hear another objection. If the depository claims that the deposit has been stolen from him, swears, but thereafter confesses, and there are also witnesses to this effect, it depends on the following: if the witnesses come after he has sworn, he must pay double amount and bring a trespass-offering; but if he has confessed before the appearance of the witnesses he has to pay the amount plus one-fifth of it and bring a trespass-offering. (We see then that he is liable to a trespass-offering in any case)? This may be explained also as Rabina stated above—viz.: At the time he takes the oath the wives of the witnesses find themselves in agony, etc. (see above p. 67), but in case of simple witnesses no offering is necessary. Said Rabina to R. Ashi: Come and hear: a depository oath is more rigorous, since for an intentional he is liable to stripes and for an unintentional to a trespass-offering in shekkels; now, stripes presuppose a warning by witnesses, and nevertheless it says that for an unintentional a trespass-offering (which signifies by implication that no offering applies to an intentional)? Said R. Mordachai: Leave alone this Boraitha, as R. Kahana said. This Boraitha *I* taught and it states that a trespass-offering must

be brought, immaterial whether for an intentional or unintentional one. Finally, come and hear the following objection: In the discussion (above, p. 69) concerning an inference *a fortiori* it is stated that there is a difference regarding a Nazarite defiling himself, as he gets stripes, which is not the case with a depository oath; now, a Nazarite does not get stripes unless there were witnesses, and as it says that it is not the case with a depository-oath, it signifies that even if here were witnesses stripes do not apply, but an offering does apply, hence Rabba's statement is objected.

R. Johanan, however, said: If one denies money where there are witnesses, he is subject to an oath but is free from such if there is a document. Said R. Papa: The reason of R. Johanan is that witnesses are subject to death (then the denial would be considered, which is not the case with a document. Said R. Huna b. R. Jehoshua to R. Papa: May it not happen also to a document to be lost? Therefore, R. Johanan's reason is that to a document real estate is encumbered, and there is no oath concerning the denying of real estate.

It was taught: If one adjures witnesses in a case of real estate, R. Johanan and R. Elazar differ: according to one they are liable, according to the other they are not; now, from what R. Johanan has said above it is to conclude that he is the one who declares them free, and his reason is that advanced by R. Huna b. Jehoshua.

Said R. Jeremiah to R. Abuhu: Shall we assume that R. Johanan and R. Elazar differ in what R. Eliezar and the rabbis differ (First Gate, Mishna VII. p. 270; see Mishna and Gemara), and he who makes him liable agrees with R. Eliezar of that Mishna, while he who frees him agrees with the rabbis? And he answered: Nay; as he who makes him free may say that in such a case even R. Eliezar admits since here concerning a false oath it reads [Lev. v. 22]: "In *any one* of all," but not all, which excludes real estate. Said R. Papa in the name of Rabha: It seems to be so also from our Mishna, which illustrates it by the theft of an ox and not by that of a slave, and this is because a slave is considered real estate to which an offering does not apply.

"*How does the oath concerning deposits take place*," etc. The rabbis taught: "When the oath was made in general, he is liable but for one; but when in particular, he is liable for each severally"; so R. Mair. R. Jehudah, however, said: If he says, I

swear I have it not from thee, and not from thee, and not from thee, he is liable for each one; R. Eliezar, however, maintains that he is liable for each one only then when the words "I swear" were said last; but R. Simeon said that to be liable for each one he must mention "I swear" with each one separately. Said R. Jehudah in the name of Samuel: The general of R. Mair is the particular of R. Jehudah (*i.e.*, "and not from thee, and not from thee," which is considered by R. Mair as a general, R. Jehudah considers a particular), and the general of R. Jehudah (*i.e.*, the same statement but without "and") is the particular of R. Mair. R. Johanan, however, said: Concerning "*and* not from" all agree that it is a particular; where they differ is regarding "not from thee" (without "and"), which is to R. Mair a particular, and to R. Jehudah a general. What then is a general to R. Mair? "I swear that you all have nothing with me." But what is the point they differ in? Samuel bases his view upon the just-cited Boraitha in which R. Jehudah says "and not from thee" is a particular, and this must be taken as an answer to R. Mair, who maintains that such statement is a general. On the other hand, R. Johanan bases his view upon our Mishna in which R. Mair says that for swearing "you all have nothing with" he is guilty but for one, whence it follows that if he states in his swearing "not from thee, not from thee" he is culpable for each. As to the Boraitha, R. Johanan explains it thus: R. Jehudah, answering R. Mair, says: concerning the phrase "*and not* from thee" I agree with you that it is a particular, but I do not agree with you concerning the phrase "not from thee, not from thee" (without *and*); to which Samuel cannot agree, as, he thinks, if this were the case R. Jehudah would state only in what he differs. As to the Mishna, Samuel does not agree with R. Johanan, as according to Samuel the phrase "*and* not from thee" is identical with "not from you all. (Here follow objections to the above, from our Mishna, where in all the cases it is stated with a *vahve* (-and) and the answer is: read it without "and." And to the question: Is it possible that all the "ands" are mistakes, it answers that the whole Mishna is in accordance with Rabbi's view in Tract Zebachim, where he plainly says that there is no difference whether the conjunction "and" was said or not.

"*R. Mair says: Even,*" etc. Said R. A'ha b. R. Aika: It means that even if he says wheat in the singular, it none the less means a measure of the same (as we find in [Exod. ix. 32]

the word for wheat in the singular, and it denotes the whole kind of wheat).

"*Give me the wheat*," etc. Said R. Johanan: The value of a *Peruta* from all of them counts to make him liable for each severally, and R. A'ha and Rabina differ in their explaining this point. According to one he is liable only for three particulars, but not for the oath as such, which is a general; while the other maintains that he is liable for four: for the three particulars, and for the oath as a general. But has not R. Hyya taught that he is liable to fifteen sin-offerings (if he swore to five persons), so that the Tana of the Boraitha counts only the particulars and not the five generals (for, with the generals it would make up 20: $3 \times 5 = 15$ for the particulars, and five for the oaths in general)? The Tana counts only the particulars, and he does not count the generals, though he holds one liable for a general. But again, there is another Boraitha by the same R. Hyya in which the liability counts twenty? This second Boraitha refers to the previous statement in the Mishna, "Give me the deposit, the loan," etc., which amount to *four* particulars.

Rabha questioned R. Na'hman: How is it if five persons claim the four articles just mentioned, and he says to one of them: I swear that thou hast not with me a deposit, a loan, a robbed, a lost article, and not thou, and not thou, and not thou, and not thou, he is liable with regard to the last four only to one sin-offering (so that all in all he should be liable to eight), or because he said to each one, "*and* not thou," the particulars must be counted in each case, and hence he is liable to twenty? Come and hear what R. Hyya taught above: Twenty sin-offerings; now, if R. Hyya had in view that all particulars were mentioned in the oath, would it be necessary for him to specify the number of the sin-offerings? Hence, he surely has in view a case illustrated by you, and makes one liable for all the particulars.

"*You violated*," etc. Said R. Hyya b. Aba in the name of R. Johanan: The reason of R. Simeon is that the main claim in this case is fine. Said Rabha: We may illustrate R. Simeon's view as follows: If one says, "Give me the wheat, barley and rye which I have with you," and the answer is, "I swear that you have no wheat with me," and it was found that he really had no wheat, but had barley and rye, he is free, because the oath for the wheat was true; said Abayi to him: This illustration does not answer the purpose, since when swearing about

wheat he did not deny barley and rye. But R. Simeon's view may be illustrated thus: one answers "I swear you have nothing with me," whereupon it was found that he had no wheat, but barley and rye, in which case he is culpable? Therefore, when Rabin came he said in the name of R. Johanan: Their point of difference is that according to R. Simeon the plaintiff demands only the fine, but not the indemnity for the shame and loss of value which is not fine, while according to the sages he demands also the latter. And their respective reasons are explained by R. Papa thus: According to R. Simeon one would not demand an amount that has to be appraised as yet, while the fine is an amount established in the Scripture; on the other hand, the rabbis maintain that, on the contrary, one would not demand a fine, the admission of which by the offender makes him free, while the indemnity for shame, etc. he must pay at all events.

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE CIRCUMSTANCES UNDER WHICH THE COURT GIVES AN OATH TO ONE OF THE CONTESTANTS. —THE NATURE OF THE CLAIM AND OF ITS PARTIAL ADMISSION. —WHICH ADMISSION IS OR IS NOT REGARDED AS CORRESPONDING WITH THE CLAIM.—THE CASES WHERE THE CLAIM IS FOR MOVEABLES AND THE ADMISSION FOR IMMOVABLES, OR *vice versa.*—WHO ARE OR ARE NOT FIT TO ENTER A CLAIM WHICH ENTAILS AN OATH. —THE FORM OF THE OATH AND THE INTRODUCTION THERETO USED BY THE COURT, AS WELL AS THE KIND OF SACRED OBJECT ONE MUST HOLD WHEN TAKING THE OATH.—ARTICLES THE CLAIM TO WHICH ENTAILS NO OATH.—THE CONDITIONS UNDER WHICH EITHER AN OATH MUST BE TAKEN FOR A LOST PLEDGE OR THE VALUE THEREOF MUST BE PAID.

MISHNA *I.*: In the case of an oath before court, the claim must amount to two silver, and the confession, to one peruta; and if the confession is not of the same kind with the claim, he is free. How so? I have with you two silver. You have by me only one peruta; he is free. I have with you two silver and one peruta. You have by me but one peruta; he is liable. I have with you one mana. You have nothing by me; he is free. I have one mana with you. You have by me only fifty dinar; he is liable. My father has a mana with you. You have by me only fifty dinar; he is free, for he is in this case like to him who returns a thing lost. I have with you a mana. Yea. Next day the plaintiff says: Give it to me. I have given it to you already; he is free; but if his answer be: You have nothing by me, he is liable. I have with you a mana. Yea. Give it to me only in presence of witnesses. Next day he requires the money, whereupon the defendant says: I have given it to you already; he is liable, as he was to pay it before witnesses. I have in your possession a litra of gold. Nay; you have by me only a litra of silver; he is free. But if plaintiff says: I have with you a *gold* dinar. Nay; you have by me only a *silver* dinar, a trecissis, a fundion and a perutah, he is liable, since all the

mentioned coins are of the same kind. I have in your possession a kur of grain. Nay; you have only a lethech of legume; he is free. I have with you a kur of fruit. Nay; you have by me only a lethech of legume; he is liable, since legume is in the category of fruit. If the claim was wheat and the defendant admits barley, he is free. Raban Gamaliel, however, finds him liable. If one requires from another tankards of oil, and latter admits pitchers, he must, according to Admon, take the oath, since it is a case of partial admission; but the sages say: The confession is not of the same kind with the claim. Said R. Gamaliel: Admon's decision appears to me to be correct. If one requires movables and real estate and the other admits movables but denies real estate or *vice versa*, he is free. If he admits but a part of the real estate he is likewise free; but if he admits but a part of the movables, he is liable, for property that is not subject to loss necessitates the taking of the oath with reference to property that is subject thereto. There is no oath to the claim of a deaf-mute, an imbecile, or a minor; nor is a minor to take an oath, but there is an oath to the claim of a minor or of the sanctuary.

GEMARA: How is an oath given? Said R. Jehudah in the name of Rabh: One is made to swear with the oath of the Scripture [Gen. xxiv. 3]: "And he will make thee swear by the Lord, the God of heaven." Said Rabina to R. Ashi: Is this in accordance with R. Hanina b. Aidi, who said that the unique holy name is required? Answered he: Nay; this may be even in accordance with the rabbis, who say that a divine attribute is sufficient, and the difference between the two is that he (who takes the oath) must keep in his hand a holy object; and this is in accordance with Rabha, who said that a judge who gives one the oath in the name of the Lord the God of heaven should be considered as he who erred in what was written plainly in a Mishna, so that the oath must be given again. And R. Papa says that a judge who gives one the oath by making him keep the *Tephilin*, is likewise considered erring, as the object kept must be the holy scrolls. (Says the Gemara): The Halakha prevails with Rabha, as there is no oath made without one's holding some holy object; and not with R. Papa, as after all there was a holy object in the hand of the one who took the oath.

One must stand when taking the oath; a scholar, however, may do it while sitting. Furthermore, the oath must originally

be performed with the holy scrolls; a scholar, however, may take the oath even originally with *Tephilin*.

The rabbis taught: Also an oath taken by one before the court must be uttered in a language he understands, and the court must say to him the following introduction to the oath: Be aware that the whole world was trembling when the Holy One, blessed be He, spake on the Mount Sinai: "Thou shalt not bear the name of the Lord thy God falsely"; likewise concerning all transgressions mentioned in the Torah it reads: "*Venakkei*" (literally, he will forgive), and concerning a false oath it reads further, "*Lo ienakei*" (literally, he will not forgive); again, for all other transgressions only the sinner himself is punished, while here (in case of oath) the punishment extends also to his family, as it reads [Eccl. v. 5]: "Suffer not thy mouth to cause thy flesh to sin," and by the expression "flesh" one's family is meant, as [Isa. lviii. 7]: "From thy own flesh." Furthermore, for all other transgressions the sinner himself is alone punished, while here the whole world is punished, as [Hosea, iv. 2, 3]: "There is false swearing, etc. . . . therefore shall the land mourn." (But perhaps it means that only when the sinner committed *all* the transgressions mentioned here in Hosea? This cannot be borne in mind, as it reads in [Jerem. xxiii. 10]: "For because of false swearing mourneth the land.") Again, the punishment for all other transgression is, because of the merits of the sinner's forefathers, postponed for some two or three generations, but here he is punished immediately, as it reads [Zech. v. 4]: "I bring it forth, saith the Lord of hosts, and it shall enter into the house of the thief, and in to the house of him that sweareth falsely by my name: and it shall remain in the midst of his house, and shall consume it with its timber and its stones"; "I bring it forth" means immediately; "it shall enter into the house of the thief" means who steal the mind of the people, *e.g.*, he who has no money with his neighbor, claims such and makes latter swear; "into the house of him who sweareth falsely" means literally; "it shall remain in the midst of his house," etc., to learn from this that things indestructible by fire or water are destroyed by false swearing. If after having listened to all this introduction, he says: "I will not take the oath," the court sends him away immediately (that he might not reconsider and take it); but if he says: "I will nevertheless swear," the people present say [Numb. xvi. 26]: "Depart, I pray you, from the tents of these wicked."

Again, when he is ready to take the oath, the court says again to him: Be aware that the oath which you take is not according to your own mind, but to the mind of the Omnipotent and of the court, as we find by Moses, our master, when he made the Israelites swear, he said: You shall be aware that your oath is not by your own mind, but by that of the Omnipotent, as it reads [Deut. xxix. 13, 14]: "And not with you alone, etc. . . . But with him that is standing here," etc., and it is not meant only those were at the Mount Sinai, but all future generations, and all proselytes who will embrace Judaism in the future; and not only regarding the commandments given on that Mount, but also regarding all commandments that will be established in the future and be they lenient, such as the reading of the Book of Esther, as it reads there [Est. ix. 27]: "The Jews confirmed it as a duty," etc., which means they confirmed a duty imposed upon them in the past.

The text above states "also an oath," etc. Why also? It is an addition to a Mishna in Tract Benedictions—viz.: the following are uttered in any language: The portion said to a suspected woman, the confession on tithe, the reading of *Shema*, the saying of the prayer, of the benediction after meals, the witness-oath, and the oath of a depository. So that the "also" from here comes to add yet the oath given by the court.

The master says: The whole world was trembling, etc. But why? Was it because it was ordained on Sinai? Then, all the ten commandments were given there; and if because it is more rigorous, is it indeed so? Is there not a Mishna: Lenient means positive and negative, except "Thou shalt not bear the holy name," etc.; rigorous are those under the category of capital punishment and *Korath*, and the commandment "Thou shalt not bear," etc. belongs to these (hence, we see that it belongs to the same category with these)? The answer is that to all other transgressions *Venakkei* applies, while here *Lo ienakkei* applies, as above. But does it not read together *Venakkei lo ienakkei?* This is explained by R. Elazar, who said: It is impossible to say *Venakkei* (he will forgive) as it is followed by *lo ienakkei* (he will not forgive), nor is it possible to say "he will not forgive" after it reads "he will forgive," therefore it must mean, he will forgive the repenters, but not those who do not repent. (The master says there) further: For all transgressions, etc., while here (in the case of oath) the punishment extends also to his family. But does it not read [Lev. xx. 5]: "Then I will set

my face against this man and against his family." And there is a Boraitha: R. Simeon says, If he has sinned, what has his family done; to teach that a family, where there is a contractor or a robber, is all considered robbers because it supports him? There *he* is punished with the punishment attached to his transgression, but the family with a lenient one; while here the family suffers the same punishment with the perjuror. As we have learned in the following Boraitha: Rabbi said, to what purpose is it written in the above-cited verse, "I will cut him off," after it reads "I will set my face," etc.? To teach that only *him* I will cut off but not the whole family.

Concerning the punishment of the whole world (mentioned before), does it not read [ibid. xxvi. 37]: "And they shall stumble one over the other," which is explained elsewhere to mean "one because of the sin of the other," as all the children of Israel are mutually responsible one for the other? The reason then is that they could have prevented the sin by protesting, but did not do so. But is not one's family included in the "whole world"? There is a difference in the nature of the punishment—viz.: his family is punished more rigorously than the rest of the world.

The text says: If he says, "I will swear, the people say: Depart," etc. Why are both the parties called wicked? Let only him who swears have this name. It is in accordance with R. Simeon b. Tarfon, who says in the following Boraitha [Exod. xxii. 10]: "Then shall an oath of the Lord be between them both," infer from this that the oath rests upon them both. It states there further on: "Not according to your own mind." To what purpose is this? Because of a case that happened in Rabha's court (where the defendant put up the money claimed from him in a case and, while going to swear, he gave it to the plaintiff to hold, and swore then that he has returned the money, thus convinced that he had made a true oath).

"*I have with you two silver,*" etc. According to Rabh the denial must be for two silver; according to Samuel the claim must amount to two silver, while the denial or the confession may be even for one *peruta*. Said Rabha: Our Mishna seems to be in accordance with Rabh, as it states that the claim must amount to two silver and the confession to one *peruta*, but it does not state the denial to be of one *peruta;* the Scripture, however, seems to be in accordance with Samuel, as it reads [ibid. ibid. 6]: "If a man do deliver unto his neighbor money

or vessels to keep," and as "vessels" is used in the plural, so is money (silvers) here in the plural; and as silver is a valuable, so everything that is a valuable; and [ibid. 8]: "Of which he can says this it is" signifies however little it may be, hence, the confession must be to a claim that is no less than two silver.

There is an objection from the following Mishna: I have with you two silver. Nay; you have only one peruta; he is free from an oath. Now, is it not because the denial here is less than of two silver, and it is an objection to Samuel? Nay; it means particularly: He claims two *silver*, and the answer is *peruta*, which is in *copper*, consequently the confession was not of the same kind with the claim. But if so, how is the second part to be understood—viz.: I have with you two silver and a *peruta*. Nay; you have with me only one *peruta*; he is liable. Now, if the claim was for the *value* of two silver, it is correct that he is liable, for the confession concerned the same kind as the claim; but if it is a claim particular on silver, then the other confessed to what was not claimed, and what this one claimed was not confessed? But is not the objection concerning Samuel, and R. Na'hman said that Samuel holds one liable for confessing one of the articles embraced in the claim; and it seems to be that the Mishna was particular regarding the kind, and not the value, of the metal, as it states in its last part: I have with you a *litra* gold. Nay; you have with me a *litra* silver; he is free. Now, if it is particular with regard to the kind of metal, then it is correct; but if it means the value of the metal, why should he be free, when the value of gold is so many times more than that of the same quantity of silver? Hence, as this last part is indisputably particular with regard to the kind of metal, so also is the first part. But if so, let this be an objection to Rabh? Rabh may say: All the Mishna treats of the value, but in the case of the *litra* gold it is different, as here the main point is the weight; and a support to this view may be found in its concluding part, which states: "I have with you a golden dinar." Nay; you have with me only a silver dinar, a trissis, a pundium and a peruta, he is liable, as they all are coins. Now, if it speaks of value, it is right that he is liable, as the claim was for coins and the confession, too, was for coins; but if it is particular, why should he be liable when he confesses to silver or copper, the claim being for gold? Said R. Elazar: It treats of a claim that is made for coins amounting to the value of a dinar, and this is stated to teach that a peruta is also considered a coin.

And so it seems to be, since it adds that "they all are each a kind of coin." But Rabh reads the Mishna to mean "to them all the law of a coin applies."

Come and hear: "I have with you a gold dinar in gold." Nay; you have with me only a silver dinar; he is liable. Now, we see that only because the claimant added specifically "in gold," the kind of the metal is particular; but if this were not added, the value of the metal would be understood? Said R. Ashi: Nay; the Boraitha intends to teach that if one says "a gold dinar," it means a dinar in gold.

R. Hyya taught a Boraitha in support of Rabh: I have with you a *sela*. Nay; a *sela* less two silver; he is liable. But if the answer is: A sela less a *maäh* (= 2½ silver), he is free (because the denial was for more than two silver).

Said R. Na'hman b. Itz'hak in the name of Samuel: All that was said hitherto concerns only the claim of the lender and the confession of the borrower, but if there was one witness, the borrower is liable even if the claim amounted only to one peruta; as it reads [Deut. xix. 15]: "There shall not be one witness to any sin or transgression," which signifies that to a transgression one witness shall not be considered, but concerning an oath one witness may be considered; and there is a Boraitha that whereever two witnesses cause the payment of money, one witness causes an oath.

R. Na'hman said again in the name of the same authority: If the claim was for wheat and barley, and the confession was to either one, he is liable. Said R. Itz'hak to him: Thanks, so also said R. Johanan. Was he thanking because someone differed with R. Johanan? Yea; it was Resh Lakish who kept silent when R. Johanan said so, only because he was drinking at that time.

An objection was raised; come and hear: If the claim comprised both personal and real estate, and the confession was to either, he is free; if, however, the confession was regarding but a part of the real estate, he is free; but if to a part of the personal estate, he is liable. We see, then, that only in a case of real estate to which an oath does not apply, he is free; but if the claim were for vessels of two kinds similar to personal and real estate respectively, and he would confess to either kind he would be liable? Nay; he would be free in this case also; and the case of personal and real estate is to teach that, when the confession was only to a part of the personal, he has to swear

even for the real estate, too. But what is there new in this teaching: that one can include in the oath also another claim? This has been already stated in Middle Gate? Here is the main teaching, while in Middle Gate the point is touched on merely by the way. R. Hyya b. Aba, however, said in the name of R. Johanan: If the claim was wheat and barley, and the confession was only to either of them, he is free. But has not R. Itz'hak expressed his thanks to one for quoting R. Johanan as saying the very opposite? The Amoraim differ regarding R. Johanan's statement.

R. Aba b. Mamal objected to R. Hyya: If the claim was for an ox, and the confession was for a lamb or *vice versa*, he is free; but if the claim was for an ox and a lamb, and the confession only for one of them, he is liable? And he answered: This Boraitha is in accordance with Admon; and you shall not take this answer as mere argument, since it is a fact that R. Johanan taught so explicitly.

R. Anan said in the name of Samuel: If one was about to claim wheat and the defendant hastened to confess barley, if it seems to the court that he did so with a view to elude the court, thereby escaping an oath, he is liable; but if only to justify the claim, he is free. He said further in the name of the same authority: If the claim was for two needles, and the confession was to one, he is liable; as for this purpose the Scripture mentions vessels, that they remain what they are. R. Papa said: If the claim was for vessels and a peruta and the confession was for the vessels and the denial for the peruta, he is free; but if *vice versa* he is liable. The one case is in accordance with Rabh, who holds that the denial must be of a claim of two silver, while the other case is in accordance with Samuel, who holds that of the claim comprised two articles and the confession was to but one, he is liable.

"*I have a mana with you*," etc. Said R. Na'hman: He is free from a biblical oath, but he is subject to a rabbinical one. (Here follows a repetition from Middle Gate and also from First Gate concerning the law that he who denies a loan is fit to be a witness, while he who denies a deposit is unfit.) According to others the saying of R. Na'hman concerned the latter part of the Mishna—viz.: I have a mana with you. Yea. And the next day when he refuses it, he says: "I have already given it to you"; he is free, to which R. Na'hman said: He must, however, take a rabbinical oath. To him who teaches this regarding the

first part of the Mishna, is obvious that it belongs also to its latter part; but he who limits this to the latter part reasons thus: In this latter part money was avowedly involved, but in the first it is doubtful.

What is the difference between a biblical and a rabbinical oath? The reversibility of the oath: a biblical oath we do not transfer from one contestant to the other, while a rabbinical we do. And according to Mar b. R. Ashi, who says that a biblical oath is also reversible, what is the difference between the two oaths? The collecting from the property: where there is a biblical oath, the collection may be made from his property, which is not the case with a rabbinical oath if he refuses to take such. And according to R. Jose who says that a rabbinical oath is also attended with collection, what is the difference between the two? In the case where one of the parties was suspected of an oath: if this was a biblical oath it is transferable to the other party, but if it is a rabbinical oath, which is only an enactment by the sages, it is not transferable, for the transferring is itself but an enactment and we do not impose one enactment upon another.

Now, what is to be done according to the rabbis, the opponents of R. Jose, who hold that in case of a rabbinical oath no collecting from the property takes place? We place him under ban. Said Rabina to R. Ashi: This is like holding one up for his throat till he takes off his clothes (*i.e.*, it is still worse than collecting from his estate, as he remains under ban until he pays)! But what shall be done? Place him under ban for one month, and if he does not come then for absolving he is, as it is customary, punished according to Rabh's practice, after which punishment he is left alone.

R. Papa said: If one holds a document in his hand and the defendant says: the document is already paid up, he is not trusted and must pay. But if he requires that the plaintiff take an oath that it has not been paid, the court is to give him an oath. Said R. A'ha b. Rabha to R. Ashi: Why should this case be different from a marriage contract where she has to take an oath only when she impairs the contract (*i.e.*, she claims that only one mana has been paid on it)? And he answered: In that case where the document is impaired, and the defendant does not require an oath, the court requires such; in this case, however, the court would tell him to pay and not exact an oath, but execute the requirement of the defendant that the plaintiff take

an oath; and if the plaintiff was a scholar no oath is to be given. Said R. Yemer to R. Ashi: Is a young scholar given the liberty to strip men of their clothes? Say only that if he was a scholar, we do not compel him to swear, so that it should not seem that the court suspects him, and on the other hand if he refuses to swear we do not collect his claim from the defendant.

Again: "*I have a mana with you.*" Said R. Jehudah in the name of R. Assi: If one has made a loan in the presence of witnesses, he must also return it in presence of witnesses. And when, he continued, I recited this before Samuel, he told me that the defendant can claim, "I have paid you in the presence of such and such witnesses, who are now away in the sea-countries." An objection was raised from our Mishna: "I have with you a mana. Yea. . . . I have returned it to you," he is free; now, if he required the money in presence of witnesses, it is a case similar to making a loan in the presence of witnesses, and nevertheless he is free, which contradicts R. Assi's statement? R. Assi may say: This is no comparison, as I speak of a case where the plaintiff has never reposed on confidence in the defendant, as he did not trust him without witnesses; but here he trusted him money without witnesses.

R. Joseph taught the same in the name of the above, as follows: If one makes a loan in presence of witnesses, the borrower is not obliged to return it in presence of witnesses, unless he was told not to repay otherwise than in presence of witnesses; and it is to this that Samuel told me: the defendant may none the less claim to have paid the debt in presence of such and such who are now in the sea-countries.

An objection was raised from the following: I have a mana with you. Yea. You shall not return it to me without the presence of witnesses. The next day, on being asked to return the money, he answered: I have returned it, the defendant is liable, for he had to return it as he was told, *i.e.*, in the presence of witnesses; and this contradicts Samuel's statement? Samuel may say that concerning this law Tanaim differ in the following Boraitha: I have given to you my money in presence of witnesses, and you must return it under the same conditions; then the defendant must either pay or adduce evidence that he has paid already; R. Jehudah b. Bathina, however, says: He may claim to have returned the money in presence of witnesses that are now in the sea-countries. R. A'ha (one of the Saburaërs) overthrew all this argument by saying: Whence do we know that

the above Tanaim differ in case he lent him before witnesses, perhaps it means in case of demanding when he says to him: Have I not lent you in presence of witnesses, so that you ought to pay me also in the presence of witnesses; but in case he told him when making the loan that he should return it in presence of witnesses, all agree that he is liable? Said R. Papi in the name of Rabha: The Halakha prevails that he who borrows in the presence of witnesses must pay also in the same manner. R. Papa, however, said in the name of the same authority that he is not obliged to do so, unless he was expressly told not to pay otherwise but in the presence of witnesses; and if the defendant claims to have paid it in the presence of such and such who are now in the sea-countries, he is trusted (Maimanides, however, reads: He is not trusted).

There was one who told his neighbor: When you will pay me my debt, you shall do so in the presence of Rubin and Simon; he, however, has paid it in presence of two other witnesses (and thereafter the plaintiff says that they are false witnesses). Said Abayi: What is the difference, he was told to pay before two witnesses, and so he did? Said Rabha to him: The plaintiff has purposely specified two witnesses by name that the defendant may not be able to say that he paid in presence of some other witnesses!

There was one who said to the borrower: You shall pay me only before two persons who are able to learn Halakhas; he, however, paid him without any witnesses present. It then happened that this money was violently taken away from the plaintiff, and he came to R. Na'hman saying: It is true, I have received the money not as a return of the loan, but as a deposit, until there will happen two witnesses who learn Halakhas and then he will repay me. Said R. Na'hman to him: As soon as you admit to have taken the money it is a repayment, and if you want the defendant to comply with the stipulation regarding the witnesses, go and bring the money here in the presence of myself and R. Sheshith, who are learned not only in Halakhas but also in *Siphra*, *Siphri*, *Tosephtha* and in all the *Gemara*.

In another case one demanded a 100 zuz which he lent to him, to which the defendant answered that such a case has never taken place; the other party, however, brought witnesses that the loan took place, but that it was returned; said Abayi: What is to be done, as the same witnesses who testify that the loan took place, testify also that it has been returned? Said Rabha

to him (follow this rule): If one asserts not to have borrowed, it means he asserts not to have paid (hence, as the statement "that it has never taken place" is false, according to the evidence of these witnesses, we must take his word as though meaning: "I have never paid," which must be taken for granted in spite of all witnesses).

In still another case the plaintiff claimed 100 zuz, and the defendant answered: Have I not paid you in the presence of so and so? And so an so upon being quoted said: They know of no such case; and R. Sheshith was about to say that this defendant must be declared a liar; said Rabha to him: He was not obliged to repay in the presence of witnesses, and therefore he was not heedful enough to know the names of them in whose presence he repaid.

In another case the plaintiff was claiming 600 zuz, and the defendant answered: Have I not repaid this claim with 100 kabs of gall-nut, the value of each kab being six zuz? To which the plaintiff said: Nay; each was worth only four zuz, and brought witnesses to this effect, demanding the remaining 200 zuz. The defendant, however, said: I have paid you all the same, if not with this said stuff, then I gave you 200 zuz in cash. Rabha decided that the defendant in this case be recognized as a liar. Said Rami b. Hama to him: Have you not said that a thing to which one pays little attention, may easily escape one's memory (why not say that he paid him the 600 zuz but did not remember the price)? Whereupon Rabha answered: A fixed price can never be forgotten.

In another case one demanded 100 zuz on a document, whereto the defendant answered: "Have I not paid you"? Whereupon the plaintiff claimed that this payment was made to meet another claim. According to R. Na'hman the document lost its value, according to R. Papa, it did not. But why should R. Papa's decision here differ from what he decided in the following similar case, where the defendant's answer was: Have you not given me that money to buy oxen for slaughtering, and I returned you that money in the slaughter-house? And where the plaintiff asserts that this was for another debt; in which case R. Papa declared the document invalid? In this case R. Papa thus decided, because the money was actually taken to buy oxen and then received in that very place where they were slaughtered; in our case, however, the plaintiff may be right in his claim. But how should such a case be ultimately decided? According

to R. Papi the document is valid, and according to R. Sheshith b. R. Aidi it is invalid, and so the Halakha prevails, provided the defendant paid in presence of witnesses and the document was not mentioned at all; but if the payment was made between themselves, the plaintiff may be trusted when he says that it was to cover another debt, because were he willing to tell a lie he would simply deny the payment.

A borrower said to the lender: "You are trusted so long as you will say that I have not paid you"; thereafter he paid him in the presence of witnesses, but the plaintiff continued his claim, saying that this payment was for another debt. Both Abayi and Rabha said that the defendant himself has trusted him, hence, he is to be trusted; R. Papa, however, opposed, saying: The defendant trusted in this case more to the plaintiff than to one's self, but did he trust him more than two witnesses?

In another case the defendant said to the plaintiff: "You are trusted like two so long you say that I have not paid you;" thereafter he paid in the presence of three, and the plaintiff still claimed his debt; in which case R. Papa said: He was trusted as two, whereas here there are three witnesses. R. Huna b. R. Jehoshua, however, opposed, saying that concerning witnesses their number whether two or 100 matters not (according to the biblical law); however, if he said to him: "You are trusted like three," and then paid him in the presence of four, it is different, as the number three was intended here not for witnesses but for the *minds*, and in this respect four minds are more than three.

"*There is no oath to the claim of a deaf-mute*," etc. For [Exod. xxii. 6]: "Unto his neighbors," etc.; and the delivery by a minor is not considered.

"*But there is an oath to the claim of a minor.*" But has it not just been said that there is no oath to such? Said Rabh: It means the minor claims that his father has given this or that to the defendant, and it is in accordance with R. Eliezar b. Jacob, who said in the following Boraitha: There is a case where one has to swear for his own claim—viz.: "Your father had with me a mana, but I paid him a half," then he has to swear for his own claim; the sages, however, say that here he is but returning a lost thing, hence, he is free. And to the question, Does not R. Eilezar agree that the defendant here is returning a lost thing, Rabh said: It treats here of a claim made by a minor after the death of his father. But again, the Mishna states expressly that there is no oath to the claim of minors? Rabh

meant to say: He was as a minor in his father's business, but already of age when putting in the claim. But then how is the expression above " for his own claim " to be understood, as here it is not his claim but that of the plaintiff? It must, therefore, be said that they differ concerning what was said by Rabha (Middle Gate, p. 4) with regard to a biblical oath that " one is not so bold as to deny the whole," etc.: R. Eliezar holds that one is not bold concerning the son (of the deceased) also, and therefore he is not regarded as returning a loss, while the rabbis hold that one is not bold only in face of the party himself, but is so with relation to the son of same, and therefore he is considered as returning a loss.

But how can you explain the Mishna in accordance with R. Eliezar b. Jacob, does not the Mishna state in its first part: If one claims, my father had with you a mana, and the answer is, I have no more than 50 dinar, he is free because he only returns a loss? There it speaks of a case when the heir did not claim: " I am certain," while in the case of our Mishna the minor is supposed to claim that he is certain. Samuel, however, says: Our Mishna's case is when the minor has real estate and one puts in a claim that his father owes him money, in this case even if the plaintiff has a document, he must swear that the minor's father has not paid it; the same is the case with the sanctuary.*

MISHNA *II.*: One does not swear to the following: To slaves, written documents, arable lands, and sanctified objects; nor is thereto applied the payment of double amount, or of four and five-fold. The gratuitous bailee need not swear, the bailee on payment need not pay damages. R. Simeon holds that one is obliged to swear to objects of the sanctuary, for whose security he is liable, but not to those for which he is not responsible. R. Mair says: There are things attached to the land and yet not considered land; but the sages do not agree with him therein. How so? I have transferred to you ten vines laden with grapes. Nay; there were only five; and he must swear according to R. Mair, while the sages hold that everything attached to the soil is to be regarded as the land itself.

One swears but to things capable of being measured, weighed, and counted. How so? I have transferred to you a house full of fruit, or, I have handed you a purse full of money. I know

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* The further discussion on this point appears in its proper places.

not how much there was, but you are at liberty to take back whatever you left there; he is free; but if plaintiff says: They were reaching the cornice, and the defendant rejoins: Only up to the window, latter is liable.

GEMARA: Whence is this deduced? From [Exod. xxii. 8]: "For all manner of trespass": general, "ox, ass, lamb, raiment"; particulars, "for any manner of lost thing"; again general, and there is a rule that wherever particulars appear between generals, it must be judged in the sense of the particulars: and as these are movables each having in body a value, so also all other cases must be equal to these; except real estate, which is not movable, slave, who are equalled to real estate, documents which though movable are in body of no value, and finally the sanctuary which is excluded because of the verse "his neighbor."

"*Double-amount, four and five-fold,*" etc. The reason here is that the Scripture speaks of four and five-fold, and as in the case of double-amount an oath does not apply; it remains only the case of three and four-fold which is not mentioned in the Scripture.

"*A gratuitous bailee need not swear.*" Whence is this deduced? From what the rabbis taught [Exod. xxii. 9]: "If a man deliver unto his neighbor": general, "an ass," etc.; particular, "to keep"; general, and on the basis of the above-mentioned rule the particulars appearing between generals render the whole to be judged in their sense: as the particulars here are movables each having in body a value, etc. (as above).

"*A bailee on pay.*" Also this is deduced from the just-cited verse and on the basis of the same rule regarding particulars appearing between generals.

"*R. Mair says: There are things attached,*" etc. From this we see that R. Mair does not hold that what is attached to the land is itself considered land. Now, why is here the point of difference illustrated by *laden* vines, and not by vines as such? Said R. Jose b. Hanina: The Mishna speaks of grapes that were ready for the press. R. Mair holds: As they are ready for pressing they are no longer considered attached to the soil, but as already pressed in which case an oath applies, while the sages do not share this opinion.

"*One swears but to things capable of being measured,*" etc. Said Abayi: Provided he says "a house full," etc., but if he says, "*this* house was full," then his claim is definite and recognized. Said Rabha to him: If this were so, why the illustration

in the last part of the Mishna with "cornice" and "window" stated by plaintiff and defendant respectively, and not with "*a* house" and "*this* house"? Therefore, says Rabha, there is no liability of an oath unless the claim concerned a certain measure or weight, and the confession was made also to measure or weight. There is a Boraitha in accordance with Rabha: "I have a kur of grain with you." Nay; you have nothing with me; he is free. "I have with you a big chandelier." Nay; you have only a small one; he is free. However, if he says: "I have with you a kur of grain," and the answer is: Only a lethech; "or a chandelier of ten pounds," and the answer is: One of only five pounds, he is liable. Because the rule underlying this judging is: One is not liable unless the claim was for a certain measure, weight or number, and the confession was to the same effect. Now, what is the addition of the rule for in the Boraitha? To indicate that "this house *full*" means also a measure. But why is it not a partial confession if he confesses to a small chandelier when the claim is for a big one? Because to the claim as it is, there is here no confession, nor is the claim made for what is confessed (as the big and small chandelier are two different things); but is not the same the case when the claim is for one of ten pounds, and the confession for one of five pounds? Said R. Samuel b. R. Itz'hak: It speaks of a chandelier made of separable pieces, and the confession was to five pounds of the same chandelier; why, then, is not the same the case with the girdle that may have been of separable pieces? And as this is not so, we must say that it does not speak of pieces in the other case of the chandelier either! Therefore, said R. Aba b. Mamal, it speaks of a whole chandelier, but when the claim is for a big and the confession for a small one, then are two wholly different things involved; but if it speaks of the weight, one could by rubbing reduce the weight of such from ten to five pounds, the only object thus remaining the same.

MISHNA *III.*: If one lends to his neighbor on a pledge, and the pledge got lost, whereupon the plaintiff says: I lent you on it a sela, but it was worth only a shekkel; the other party says: No, truly, you lent me a sela on it, but it was worth a sela, he is free. But if the plaintiff claims: I lent you on it a sela, but it was worth only a shekkel; whereto the other replies: Nay; you did lend me on it a sela, and it was worth three dinar, he is liable. If the debtor says: You lent me on it a sela, while it was worth two selas, whereto the creditor: Nay; I gave

you on it one sela, its value only, he is free. But if the former says: You lent me a sela on it, it was, however, worth two, and latter says: Nay; I lent you thereon a sela, and it was worth only five dinar, he is liable. Who is to take the oath? The depository, as he could meanwhile produce the pledge if the other one were to swear.

GEMARA: The concluding sentence of the Mishna belongs to which part? If to the last, there is a rule that the oath rests with the lender? Said Samuel and also R. Hyya b. Rabh and also R. Johanan, it belongs to the middle part: I lent you a sela and it was worth a shekkel, and the other says it was worth three dinars, in which case the borrower confesses to owe yet one dinar, hence, it is a partial admission to which an oath applies; the rabbis, however, have transferred this oath from the borrower to the lender.* And now that R. Ashi has decided that both depositor and depositary must each take an oath, he latter: that he does not have the pledge any more, and the former: that its value amounted to so and so much, the Mishna is to be explained thus: Who is to take the oath first? The depositary, since if the depositor swore first the other could meanwhile reconsider and produce the pledge.

Samuel said: † If one lends to his neighbor 1,000 zuz, and pledges for them the handle of a scythe only, if the handle is lost the 1,000 zuz are lost, but if the pledge consisted of such two handles the case is different, as we do not assume that he gave 500 zuz for each handle, but for the whole, and as only one of them was lost the lender loses nothing; R. Na'hman, however, maintains that the same is the case with two, *i.e.*, if one is lost the lender loses 500 zuz, and if both are lost he loses the whole 1,000; but the same is not the case if the pledge consisted of a scythe handle and a piece of metal. The opinion of the sages from Nahardea is that the same is the case with the last mentioned pledge: If either the metal or the handle is lost, 500 zuz are lost, and the loss of both entails the loss of all the 1,000.

An objection was raised from our Mishna—viz.: From the case where defendant says it was worth but three dinar. Why is he liable in this case? Let the depositor say: You have taken it for a sela? The Mishna has in view the case where the de-

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* A Talmudic *sela* was of two shekkels, each shekkel of two dinars; hence 3 dinar = $1\frac{1}{2}$ shekkel.

† This is a repetition from Tract Middle Gate, p. 206, which is reproduced here because R. Na'hman's part is not mentioned there.

positary expressly took upon him responsibility for its value only, which is not so in Samuel's case.*

Concerning the last mentioned case shall we assume that the following Tanaim differ: If one had made a loan on a pledge and the Sabbathic year entered, the pledge, though worth only the half value of the loan, the year does not release the loan [Deut. xv. 2]; R. Jehudah the Nassi, however, maintains that if the pledge amounted to the value of the whole debt, the year does not release, but if not to this value, the year does release. Now, let us see what does the first Tana mean by his saying "it does not release"? If he means, it does not release the half debt and R. Jehudah comes to teach that it releases even this half, then of what use is a pledge? We must then say that the first Tana means it releases the entire debt, as he agrees with Samuel's theory that as soon as it was accepted for this amount it must be considered only as such, while R. Jehudah differs! Nay; they differ with regard to the worth of the pledge and still R. Jehudah maintains that the entire debt is released, for the pledge which is not worth the amount of the debt he considers as mere memorandum.

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* Here follows the discussion from Middle Gate, p. 206:

"*On a pledge*," which paragraph is followed by the statement of R. Itz'hak that a creditor acquires title in a pledge (ibid., p. 207). Also the discussion concerning the question as to whether he who takes care of a found object is considered a gratuitous bailee, or a bailee for hire (ibid., p. 65), all which we deem unnecessary to repeat here

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE CONDITIONS UNDER WHICH THE OATH IS GIVEN TO THE PLAINTIFF OR TO THE DEFENDANT.—REGARDING A SUSPECT OF PERJURY.—THE DIFFERENCE BETWEEN A BIBLICAL AND A RABBINICAL OATH.—IS OR IS NOT A RABBINICAL OATH TRANSFERABLE?—THE OATH OF ORPHANS (PLAINTIFF OR DEFENDANT), PARTNERS, GARDENERS.—THE CASES WHEN THE SABBATHIC YEAR RELEASES ONE FROM AN OATH.

MISHNA *I.*: All those who are subject to a biblical oath swear and do not pay. The following, however, swear in order to receive pay: The employee, the robbed, the bruised, he whose adversary is suspicious of perjury, and the store-keeper on his business book. The employee, how so? Give me my wages which I have with you, and the employer answers: I have given them to you already, and the former claims: I have received nothing; he swears and gets his claim. R. Jehudah, however, says: Unless there be a partial confession (the oath is not effective)—viz.: the employed says: Give me my fifty dinar wages you have in your hands, and the employer replies: You received on this account one gold dinar.

How is it with the robbed? If witnesses testify that one entered his house to seize a pledge without permission, now the householder says: You have seized one of my utensils, and he denies, plaintiff swears and takes it. R. Jehudah, however, says: Unless a partial confession takes place there—viz.: You took two utensils, and he answers: I took but one.

How is it with the bruised? If witnesses testify that one entered the premises of so and so unhurt and went out in wounds, now the plaintiff says to the defendant: You bruised my body, and he says: I did not, former swears and receives pay. R. Jehudah says: Unless a partial confession took place—viz.: plaintiff says: You wrought upon me two bruises, and the defendant says: Only one.

How is the adversary suspicious of perjury? As follows: Be

it that he became suspicious while under oath as a witness, or under oath for a deposit, or even for merely vain swearing. If one of them is a gambler in dice, a usurer, a dove hunter, or one who is doing business with the fruit of the Sabbathical year, his adversary swears and obtains his claim. In case, however, both were suspicious, the oath returns to its place; such is R. Jose's opinion; R. Mair holds that they divide.

The store-keeper on his book, how so? Not that he say to somebody: It is stated in my book that you owe me 200 zuz, but that when one says to the store-keeper: Give my son two saah of wheat, or: Give my laborer a sela in money, whereupon the store-keeper claims: So I did give, and the others say: We have received nothing, the two swear; he swears and gets paid, and they likewise swear and get paid by the employer. Said b. Nanan: How is that? Either party will necessarily be committed to false swearing! But both parties receive their respective claims rather without swearing. If one said to the store-keeper: Give me fruit for one dinar, and he, having given him, says: Give me the dinar, whereupon this replies: I have given it to you already and you put it into the cash-drawer, the purchaser is to swear. If, however, the customer gave the dinar and said: Give me the fruit, and the store-keeper says: I have given them to you already and you brought them over to your house, the store-keeper is to swear. R. Jehudah says: He who has the fruit in his possession has the preference.

If one says to the money-changer: Give me change for a dinar, and he was given it, whereupon the changer says to him: Give the dinar, and he answers: I have given it to you already and you have put it into the cash-drawer, the customer has to swear. But if he gave him the dinar and says: Give me the change, and the other one replies: I have given it to you already and you have put it into your purse, the money-changer has to swear. R. Jehudah says: It is not customary with a money-changer to give out an issar before he has received his dinar.

As it has been established that a woman who damaged her marriage contract can obtain payment only on oath; that, when a single witness testifies that she was paid, she can receive payment only on oath; that she can get paid from encumbered estates or from the estates of the orphans only on oath; and that when she is to be paid in her husband's absence, she is so only on oath: so likewise should orphans be paid only on oath —viz.: We swear that our father had not willed to us nor told

us, and that we have not found among the documents of our father that this note has been paid. R. Johanan b. Buoka says: Even if the son was born after his father's death, he may swear and collect. R. Simeon b. Gamaliel says: If there are witnesses to the effect that the father said while dying: This note has not been paid, the heir collects without an oath. The following have to swear also in the case when there is no claim: Partners, gardeners, guardians, a woman business-manager, and the son of the house. When one of these parties says: What is your claim against me? and the other one answers: My only desire is that you swear, he must swear. If the partners or gardeners have already divided, they are no longer liable to take an oath. However, if an oath is imposed upon one of them from some other source, all other claims may be included. The Sabbathic year releases from an oath.

GEMARA: "*Swear and do not pay.*" Whence is this deduced? From [Exod. xxii. 10]: "An oath of the Lord, . . . the owner of it shall accept this," etc.; which signifies that the oath rests upon him who has to pay.

"*The following, however, swear in order to receive pay.*" Why have the rabbis enacted the law that the laborer must swear? (For the answer see Middle Gate, p. 300 f.; par. *But it is correct.*) Said R. Na'hman in the name of Samuel: This law holds good, provided he was hired in presence of witnesses, but if without witnesses, the employer is to be trusted, since if he would he could say that he has never hired him. Said R. Itz'hak to him: Thanks, so also said R. Johanan. (Says the Gemara): From this it appears that Resh Lakish differed with the latter; and why is it not mentioned? Some say: Resh Lakish was drinking at that time, according to others R. Itz'hak was then absent from college. The same was taught also by R. Menashia b. Zebid in the name of Rabh. Said Rami b. Hama: How fair is this Halakha! Said Rabha to him: I do not see its fairness, since according to its theory the four kinds of bailees to whom a biblical oath applies find no practical illustration, for as any of them may say that such a thing (as claimed by the plaintiff) has never occurred, he may be trusted also in case when asserting that the thing has been robbed; and should you say that the object was deposited with such a bailee in the presence of witnesses, he could still say that he has returned it, and as he would be trusted when claiming that he has returned it, he may likewise be trusted when he says that it has been robbed;

hence there can be here no case unless the plaintiff took a document on his deposit, as only in this case the bailee cannot assert that he has returned the object, for if he had done so he would have taken back the document. [(Says the Gemara): From Rabha's objection we see that both Rabha and Rami b. Hama hold that if one deposits an article in the presence of witnesses, the depositary is not bound to return it in presence of witnesses, while if deposited on a document the depositary must possess evidence that he has returned the deposit.]

Concerning this Rami b. Hama applied to R. Sheshith [I Sam. xxi. 13]: "And David took these words to his heart"; as R. Sheshith, when meeting Rabba b. Samuel, questioned him: Has the master learned something concerning an employee? And he answered: Yea; an employee, at the time of getting his pay, is to take an oath and then receive his pay. How so? If the employee claims: You hired me and did not pay; while the employer says: I hired you and paid you. However, if the former's claim is: You hired me for two zuz and gave me only one; while the employer says that he hired him only for one, then it is incumbent upon the plaintiff to bring evidence. Now, as in the last case the plaintiff is to bring evidence, it is to be assumed that in the first case there was no evidence required (hence, the above theory of Rabh and Samuel is overthrown). Said R. Na'hman b. Itz'hak (this is no objection at all): It may be that even in the first case there was some evidence, and the evidence in the last case is only required with regard to the collection of the payment from the employer, but concerning the oath the Boraitha did not care to teach.

R. Jeremiah b. Aba said: The college sent a message to Samuel, thus: Let the master teach us as to who is to swear in a case where the specialist says, "You have hired me for two zuz to repair something," while the employer says that he hired him only for one zuz; and Samuel answered: In such a case the employer is to swear and the employee loses the case, for as regards price once fixed people remember it well. But has not Rabba b. Samuel said above that in such a case the burden of proof lies upon the plaintiff, and as here he possesses no evidence he should lose the case even without any oath on the part of the employer? Said R. Na'hman: The above Boraitha is to be interpreted as teaching alternatively, *i.e.*, either the employee is to bring evidence and receive his pay, or the employer is to swear and former loses.

An objection was raised from the following Boraitha: If one has given his garment to a specalist for repair and thereafter they contradict each other concerning the price for labor and services, the law is thus: so long as the article is with the specialist the burden of proof lies on owner; and if it was delivered, the time of payment not yet elapsed, the specialist is to swear and then collect, but if that time has already elapsed, it remains for him as plaintiff to bring evidence. Thus we see that if within the time, the specialist is to swear and collect. Why let the owner swear and the specialist lose? Said R. Na'hman b. Itz'hak: This Boraitha is in accordance with R. Jehudah, who holds that so long as the oath seems to rest upon the owner (and there is a partial admission on his part) the rabbis' enactment is that the employer shall swear and thereupon collect. But let us see which R. Jehudah is meant here? It can not be the R. Jehudah of our Mishna, as he plainly requires a partial admission; it must, then, be the R. Jehudah of the following Boraitha: So long as the time of payment has not elapsed, it is the employee that swears and collects, but after the expiration of said time it is for the employer to swear. Said R. Jehudah: Provided the employee claims fifty dinar for his work, and the employer claims to have already paid one gold dinar (= 20 silver dinar), or they contradict each other regarding the price; but if the employer claims that he has never hired him, or that he has paid his wages to the last pesuta, the burden of proof rests upon the plaintiff.

R. Sheshith b. R. Aidi, however, opposed thus: Would you say that a contradiction regarding the price is in accordance with R. Jehudah and not with the rabbis; bear in mind that where R. Jehudah is in our Mishna more rigorous (as he demands a partial admission) the rabbis are lenient; should the rabbis be more rigorous in the Boraitha where R. Jehudah is more lenient? But is it possible to explain the Boraitha in accordance with the rabbis, has not Rabba b. Samuel taught, in case of contradiction regarding the price, that the plaintiff is to bring evidence, which teaching could be neither in accordance with the rabbis nor with R. Jehudah? Therefore said Rabha: Their point of difference is as follows: R. Jehudah holds that, concerning a biblical oath which applies to the employer, the rabbis have enacted for the sake of the employee to reverse the oath to the latter, so that he may, upon swearing, collect; but where there is a rabbinical oath (as where there is no partial admission) which is

itself merely an enactment, they do not impose another enactment upon it; the rabbis, however, are of the opinion that the said enactment (that the employee swear) applies also to the case of a rabbinical oath, and as to the contradiction about the price, it may be said that, as a price usually remains in memory, the rabbis leave in this case the oath to the employer.

"*Entered his house to seize,*" etc. But perhaps he has not taken any pledge? Has not R. Na'hman said that he who, hatchet in hand, says, "I will go to cut down the tree belonging to so and so," and thereafter the tree is found cut down, we nevertheless do not say that he did cut it down? Hence we see that a man may sometimes merely exaggerate or affect to do something and in reality does not do it; why then not say the same in our case? Read, then, in the Mishna that he actually did seize a pledge. But if so, let the witness testify as to what the pledge was? Said Rabba b. b. 'Hana in the name of R. Johanan: The Mishna speaks of the pledger as claiming that the defendant seized some small utensils which he concealed under his garments (so that the witnesses could not see them, according to Rashi; according to Tasspheth, however, plaintiff claims that the defendant took more than the part the witnesses could see).

R. Jehudah said: If witnesses saw one concealing utensils under his garments when coming out from a house, and he claims that he had bought them, he is not trusted (in case the owner of said house claims that he only loaned them to the defendant), provided the owner of the house was not wont to sell his utensils, but if he was so, the defendant may be trusted; and even in this case he is not trusted if such utensils are not as a rule to be concealed, but if they are so he may, again, be trusted; and even when they are not ordinarily hidden, but the defendant was of such a standing as would not allow him to carry things publicly, it may be assumed that such is his usage and therefore he may be trusted. All this refers only to a claim of hiring and loaning; if, however, the claim concerns stealing, the plaintiff is not trusted when he makes one a thief who is not suspicious of being such (but the defendant has to swear that he bought them). Furthermore, even in the case where the defendant is not reliable he is not to be trusted only with regard to utensils not used for loan and hire, but in case the utensils are loaned or hired out, he is trusted; as concerning this R. Huna b. Abin once sent a message (see Middle Gate, p. 306 f.).

Rabha said: In case one was going to seize the goods of another, even the watchman of the house or his wife is trusted on an oath, and the defendant must pay. Questioned R. Papa: Is a laborer who was doing some work in the house at that time trusted in this case on an oath? This question remains undecided.

R. Yemar said to R. Ashi: If the claim is for a silver goblet, may the defendant be trusted with an oath or not? (and R. Ashi answered: We have to inquire into the position of the man; if he is wealthy or so much respected that people deposit with him valuables of this kind, he is trusted, otherwise he is not trusted).

"*How is it with the bruised,*" etc. Said R. Jehudah in the name of Samuel: The oath applies only in such a case when the plaintiff could himself cause a wound, but if it was not possible for him to do so, he recovers his claim without an oath. But why not fear that he may have hurt himself against a wall or a stone? Taught R. Hyya: It speaks of this case, the wound is found on his shoulder or under the arm. But it may have been inflicted by someone other than the defendant? There was nobody else in the house.

"*Even for merely vain swearing.*" Why even? It means to say: not only; *i.e.*, not only if suspicious of an oath where denial of money is involved, but also even if suspicious of such where only a denial of words is involved, he is not trusted. But if so, let an uttered oath, too, be taught? The Mishna teaches but oaths which are made falsely, while an uttered oath may be made for the future and may therefore be fulfilled. But again, let it include an uttered oath for the past? In teaching vain swearing it indeed includes all that is equal thereto.

"*A gambler in dice,*" etc. To what purpose is this statement? The Mishna classifies first those who are unfit biblically and then also the rabbinically unfit.

"*In case both are suspicious,*" etc. Rabha questioned R. Na'hman: How should we read in the Mishna, R. Mair holds, they divide or R. Jose holds so? Answered he: I do not know. How then shall the Halakha prevail? Answered he again: I do not know. However, it was taught that R. Joseph b. Miniumi said in the name of R. Na'hman that R. Jose was the one who said they divide; likewise taught R. Zebid b. Oshia, or R. Zebid in the name of Oshia. And R. Joseph b. Miniumi said that such a case happened in the court of R. Na'hman and the decision was to divide.

"*The oath returns to its place.*" To which place? Said R. Ami: According to our masters in Babaylon, it returns to its place, the Mount Sinai; and our masters in Palestine said: It returns to him who was obliged to take it (and as he cannot swear, he must pay). Said R. Papa: "Our masters in Babylon" means Rabh and Samuel—viz.: our Mishna states that orphans shall not pay without an oath, and it was discussed as to what it means: shall we assume that the orphans cannot recover from the borrower unless they take an oath; is this possible, since their father, if alive, could recover without an oath, why should they swear? It must then be explained to mean orphans that have to recover from other orphans; and both Rabh and Samuel said provided the lender died while the borrower was still alive, but if the borrower died first the lender was already obliged to swear in order to recover from the orphans of the borrower the latter's debt, and as a man cannot bequeath an oath to his children the oath returns to the Mount Sinai (*i.e.*, there is no oath here); as to the masters of Palestine, it is R. Aba in the case of a robbed piece of metal mentioned above and tried before him when he decided that as the defendant is obliged to swear but cannot, he must pay. Said Rabha: The Halakha seems to prevail with R. Aba; as it reads [Exod. xx. 10]: "The oath of the Lord be between *them*," etc., but not between their heirs. Now, let us see the nature of the case: if the heirs of the plaintiff claim that their father had a mana with the defendants' father and the others answer: We are aware that he had only fifty dinar, then it is a partial admission; what difference then is there whether the plaintiff himself or his heirs appear in the case? We must then say that the defendant orphans say that they are aware of fifty dinar, but are not aware of the other fifty dinar; now, if you say that such answer if put in by the defendant himself would oblige him to an oath, it is correct that the above-cited verse is needed to free the heirs from an oath; but if the defendant would not have to swear, then what is the verse for? Hence, whoever is obliged to swear but cannot swear (as in the case of the orphans) he must pay, as R. Aba decided in the case before him.

But what do Rabh and Samuel infer from the above-cited verse? What was said above by Simeon b. Tarfon: The verse comes to indicate that the oath rests upon both the contestants.

"*The storekeeper*," etc. There is a Boraitha: Rabbi said, why should these be troubled with an oath? Said R. Hyya to

him: We have learned that both the storekeeper and employees have to swear (the employees that they have not received goods in the value of such and such an amount on account of their employer; and the storekeeper that he has not yet been paid for the goods), and both storekeeper and employees collect from the employer. Has Rabba accepted R. Hyya's theory or not? Come and hear the following: Rabba said that the laborer has to take an oath that he has received nothing from the storekeeper; now, if Rabba had accepted R. Hyya's theory, it would have been stated here that the oath must be taken with reference to the employer. Said Rabha: This Boraitha intends to say thus: the laborer takes an oath with reference to the employer and in the presence of the storekeeper that he (the laborer) has taken nothing from the latter.

It was taught: If there were two parties of witnesses contradicting each other, each party may, according to R. Huna, appear and testify for itself (although either of the parties is surely false, for the court in default of evidence cannot decide which one is true or false). R. 'Hisda, however, maintains that we have nothing to do with false witnesses (and consequently neither party be trusted). Illustration: If there were two cases with two lenders, two borrowers, and two documents, and one witness of each of the two parties of witnesses was signed on the document of the other contestant, R. Huna and R. 'Hisda differ: according to former both the documents are valid, and according to R. 'Hisda they are both invalid as they are both false. On the other hand, if there was but one lender with two documents against one borrower, all agree that the lender has to suffer; but if there were two lenders with two documents against one borrower, it is a case treated of in our Mishna—(viz.: the employees say they have received nothing and claim their pay from the employer, and the storekeeper asserts to have given goods to the employers and claims his pay also from the employer, in which case the Mishna decides that both the claimants swear and recover from the employer); but what is the law in case there were two borrowers and one lender with two documents signed by the two mutually contradicting parties of witnesses, according to R. Huna? Shall we assume that as there are two borrowers we should regard each of the documents as though it were the right one and colleet thereupon the two, or as one of the documents is doubtless false the two should be regarded invalid? This question remains undecided.

"*If he said to the storekeeper: Give me fruit for a dinar.*" There is a Boraitha: R. Jehudah said, provided the fruit is lying there in a heap and each of the parties is claiming that it is his, but if the customer has the fruit in his basket and put latter upon his shoulders the burden of proof lies upon the plaintiff.

"*If he says to the money changer,*" etc. These two cases are necessary, since if only the former is stated, one might say that because fruit decays the storekeeper was in haste to put it into the basket for his customer before yet receiving the money; therefore he may be trusted; while, this not being the case with money, it is usual not to give the change before receiving the money, hence, the rabbis, too, would agree with R. Jehudah. On the other hand, if only the second case were stated one might say that only for this reason R. Jehudah differs with the rabbis, while concerning fruit he agrees with them, therefore the two cases are necessary.

"*And also the orphans,*" etc. (This has been explained above to mean orphans versus orphans, and what Rabh and Samuel have to say on this point is all recapitulated.) This statement was sent to R. Elazar accompanied with the question as to the purpose of this oath, and he answered: The heirs have to take the usual oath of heirs (explained further on), and thereupon to collect the bequest. This statement was then again sent to R. Ami, who said: They do not cease sending questions again and again! If I found something worthy of notice in it, would I not notify you thereof, without waiting for your messages? However, continued he, as this question has reached us already yet we have to say something thereabout viz.: If the lender was already summoned and it was decided that he has to take an oath, and he died in between, so that he was already obliged to swear to the orphans of the borrower, and as one cannot bequeath an oath to one's children, they are free from oath; if, however, he has not yet been summoned, and hence not yet obliged to take an oath, the orphans of the lender have to swear the oath of heirs and thereupon collect the debt.

R. Na'hman opposed: Does the court find one liable to an oath? With the death of the borrower the lender is by law liable to an oath with relation to the heirs; therefore, said he, it depends on whether or no the law, laid down above by Rabh and Samuel, is established; if yes, they are free, if not, they have to take an oath and collect. We see from this that R.

Na'hman was in doubt; but has not R. Joseph b. Miniumi said above that R. Na'hman decided in a similar case that the contestants divide? R. Na'hman's explanation here is in accordance with R. Mair, who holds, the oath returns to its place, but he himself holds with R. Jose: if one upon the death of his wife remarries and then dies, the widow and her heirs have the preference over the heirs of the first wife concerning their respective marriage contracts. We see then that the heirs collect without an oath? It speaks of the case they swore before dying. Come and hear the second part: But his heirs may adjure the widow, her hiers, and all empowered by her. (We see then that as his heirs may give an oath to her heirs, the widow who has not sworn has bequeathed, as it were, to her heirs the power of taking an oath, and this is objecting to Rabh and Samuel?) Said R. Shmaia: The Boraitha here speaks alternatively—viz.: his heirs adjure her if she was a widow, and they adjure her heirs if she was but a divorced woman (his heirs may adjure her though he himself could not have done so, as he gave her a document freeing her from all oaths). R. Nathan b. Hoshia, however, objected from the following: Preference was given to the son over his father, in that the son may collect from the orphans if he holds a document against the borrower, provided he has evidence that his father before dying told him that the document has not yet been paid, and if he has no evidence he has to swear to this effect; on the other hand, his father can under no circumstances collect without an oath; hence, the son may collect without an oath in relation to the defendant orphans, if the borrower died when the lender was still alive? Thus we see that it is in accordance with R. Simeon b. Gamaliel from our Mishna? Said R. Joseph: This Boraitha is in accordance with the school of Shamai, who holds that a document which is to be collected is to be regarded as already collected (as the estate is encumbered to the document), hence the rule that the son collects upon presenting evidence of his father's statement.

R. Na'hman happened to be in Tura; both R.' Hisda and Raaba b. R. Huna came to visit him, and asked him thus: Let the master conjoin with us in nullifying the statement of Rabh and Samuel; whereupon he answered: Have I troubled myself to make a journey of so many *parsas* to nullify the statement of these sages! It will suffice if I will agree with you not to add to their statement (*i.e.*, not to deduce therefrom any other cases). (Asks the Gemara): What other cases? *E.g.*, such as were

decided by R. Papa: He who impairs his document (by saying that he collected a part thereof), and thereafter dies, his heirs may take the oath of heirs and collect the money (which oath could not be taken according to Rabh and Samuel).

It once happened that *B*, who had borrowed money of *A* through a surety and on a document, died, *A* being still alive; thereafter *A* also died and his heirs claimed the debt from the surety. R. Papa, before whom the case was tried, was about to say that this is a case included in the decision of R. Na'hman that nothing be added to Rabh and Samuel's ruling, and in this case the heirs are to collect not from the orphans but from the surety. Said R. Huna b. R. Jehoshua to him: Are they indeed collecting from the surety for his debt and not for that of the orphans?

In another case the lender died childless, leaving a brother, and Rami b. Hama was about to say that R. Na'hman's decision includes this case, too. Said Rabha to him: Is there any difference between the heir's saying "my father told me," or "my brother told me"? Said R. Hama: As there is no ultimate decision as to whether the Halakha prevails with Rabh and Samuel or not, we should leave it to the judges; he who decides in accordance with Rabh and Samuel should not be objected, nor should protest be raised against him who follows R. Elazar's decision as a precedent. Said R. Papa: If such a case happens in our court, we shall not destroy the document, nor collect it, for fear the Halakha may prevail with Rabh and Samuel; however, not destroy it, in order to give the contestant the benefit of doubt and enable him to bring his case in another court.

Once a judge followed in his decision R. Elazar; a young scholar interested in this problem came to the judge and told him that he is able to produce a letter from the west attesting that the Halakha does not prevail with R. Elazar; and the judge said to him: Well, produce the letter and we will then see. The scholar, however, came to complain in the court of R. Hama, and latter answered that it is already decided thus: He who follows R. Elazar's ruling as a precedent cannot be protested against.

"*The following have to swear,*" etc. Does the Mishna speak of idiots? It means to say that these persons have to swear if they say they are not certain of the claim.

There is a Boraitha: The son of the house mentioned in the Mishna is not he who frequents the house, but he who is taking

care of the estate: he engages and discharges laborers, buys and sells, etc. And why should such persons take an oath? Because as a rule they allow themselves more than what is due to them. Said R. Joseph b. Miniumi in the name of R. Na'hman: Provided there was a denial made to the claim of two silver, according to the decision of Rabh.

"*If the partners and gardeners,*" etc. The schoolmen propounded a question: May one include in a rabbinical oath a claim from another business? Come and hear: If one has borrowed on the eve of the Sabbathic year and at the end of the year he become the partner or gardener of the lender, no inclusion can take place in the partner-oath if he has to take such. Thus we see the reason here to be that he borrowed on the eve of the Sabbathic year as this year released him from the oath also, but in a simple year such an oath may be inclusive? Nay; do not say that in a simple year the oath may be inclusive, but if he becomes a partner or a gardener (of the lender) on the eve of the Sabbathic year and at the end of the same he borrowed money from him, he may in his oath include also the partner-oath from the Sabbathic year; as the second part of the Boraitha states it so plainly, hence, a rabbinical oath is inclusive.

R. Huna said: All the oaths are inclusive except the oath of an employee, as this oath is given merely for the purpose of gratifying the employer. R. 'Hisda said: No oaths are to be made lenient in this respect except the oath of an employee, toward which we have to act leniently. And what is the difference between these two opinions? The requiring by the court: according to R. Huna the court itself may declare the oath inclusive independently of the plaintiff, while according to R. 'Hisda the court has no jurisdiction unless the plaintiff requires so.

"*The Sabbathic year releases.*" Whence is this deduced? From [Deut. xv. 2]: "And this is the *verbum* (*debar*) of the release," *i.e.*, it releases even words.

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING THE FOUR KINDS OF BAILEES: THE CONDITIONS UNDER WHICH THEY ARE TO PAY OR TO TAKE AN OATH.—WHAT IS AN UTTERED OATH, A VAIN OATH, A FALSE OATH.—CASES ILLUSTRATING THE VARIOUS CLAIMS REGARDING THE FOUR KINDS OF BAILEES.

MISHNA *I.*: There are four kinds of bailees: gratuitous, on hire, borrower, and hirer. The gratuitous bailee swears to every claim; the borrower pays every claim; the paid bailee as well as the hirer swears in case the cattle broke its leg or was seized or died, but both pay when it got lost or stolen. If one asks his gratuitous bailee: Where is my ox? He is dead, while in reality he is only leg-broken, or seized, or stolen, or lost; or he answers: He is leg-broken, while in fact he is dead, seized or lost; or he answers: He is seized, while he is dead, leg-broken, stolen or lost; or he answers: He is lost, while in fact he is dead, leg-broken, seized or stolen, to which the other rejoins: I adjure you; and the answer is: Amen, he is free. Where is my ox? And the other one answers: I know not what you talk about, while in reality the ox is dead, leg-broken, seized, stolen or lost. I adjure you. Amen, he is free. But if he asks: Where is my ox? Lost. I adjure you. Amen, but witnesses appear to testify that he consumed him, he must pay the full value; if he confesses it of his own will he must pay the value plus one-fifth, and is to bring a trespass-offering. If he asks: Where is my ox? And the answer is: Stolen. I adjure you. Amen, and witnesses appear to testify that he himself stole the ox, he must pay double amount; on self-confession, however, he pays the value plus one-fifth, and brings an offering.

If one says to a man in the street: Where is my ox that you have stolen? And the answer is: I have not stolen, but witnesses testify that he did steal him, he is to pay double amount; and if he has slaughtered or sold him, he must pay four and five-fold. However, if, on noticing the approach of witnesses against him, he says: I have stolen him, but not slaughtered or

sold, he is to pay but the principal amount. If one asks the borrower: Where is my ox? And he answers: He died, while in reality he is leg-broken, seized, stolen or lost; or: Leg-broken, while he is dead, seized, stolen or lost; seized, while he is dead, leg-broken, stolen or lost; stolen, while he is dead, leg-broken, seized or lost; Lost, while he is dead, leg-broken, seized or stolen, whereupon the other one says: I adjure you, and the answer is: Amen, he is free. Where is my ox? I know not what you are talking about, while in fact the ox is dead, leg-broken, seized, stolen or lost. I adjure you. Amen, he is liable. If one says to a paid bailee or to a hirer: Where is my ox, and he answers: He is dead, while he is leg-broken or seized; Leg-broken, while he is dead or seized; seized, while he is dead or leg-broken; stolen, when he is lost or seized; lost, while he has been stolen, whereupon former: I adjure you. Amen, he is free. But if the answer be: He is dead, leg-broken or seized, while he has been stolen or lost, former: I adjure you. Amen, he is liable. But if he says: he has been stolen, or: lost, while he is dead, leg-broken or seized; I adjure you. Amen, he is free. This is the rule: Whoever tends to commutate, by his oath, liability to liability, unliability to unliability, or unliability to liability, is free; but if liability to unliability, he is liable. This is the rule in brief: Whoever takes an oath in order to make his case lenient, is liable; but if *vice versa*, he is free.

GEMARA: Who is the Tana of the four classes of bailees? Said R. Na'hman in the name of Rabba b. Abuhu: It is R. Mair. Said Rabha to him: Is then there a Tana who does not hold so? And the answer was: I mean to say who is the Tana that maintains that the hirer of a thing is under the same rule with a bailee for pay? and this is R. Mair, according to Rabba b. Abuhu. But is there not a Boraitha that R. Mair holds a hirer under the law of a gratuitous bailee, and R. Jehudah is the one who places him under the law of a paid bailee? Rabba b. Abuhu has reversed in the Mishna the order of the names (by tradition). But after all, according to both R. Mair and R. Jehudah there are but three classes of bailees, why then four in the Mishna? Said R. Na'hman b. Itz'hak, the Mishna means to say: There are four classes of bailees but their laws are three.

"*I know not what you talk about.*" Said Rabh: All the expressions "free" used in the Mishna free only from the liability of a trespass-offering, attaching to a depositary, but not from that of a sin-offering, attaching to an uttered oath. Samuel,

however, maintains that it frees them even from the last-mentioned liability.

And what is here the point of difference? Samuel holds that as such an oath can not refer to the future, one is not liable even for the past; while Rabh does not share this opinion. But this their difference has already been pointed out above in connection with the oath made by *A* that *B* threw a stone into the sea, why then again? It was necessary, as in the case of throwing a stone Rabh holds *A* liable because he takes the oath on his own accord, but here, where the court compels him to swear, one might say that Rabh agrees with Samuel, which would be in accordance with R. Ami, who said elsewhere that one is not liable for an uttered oath when made by the judges to swear; on the other hand, if only this were stated one could say that only in this case Samuel differs with Rabh, but in the other one he agrees with him.

What is the reason of R. Ami's statement? It is the verse [Lev. v. 4]: "Or any person swear," which means he swears voluntarily.

R. Elazar, however, said with reference to the expression "free" the Mishna uses: all are free from a depositary-oath but are liable for an uttered oath, excepting, however, the following: a borrower answering "I know not what you talk about," the paid bailee who claims stolen or lost, the hirer claiming stolen or lost, in which cases the Mishna makes them liable to depositary-oath, because here a denial of cash money is involved.

APPENDIX TO PAGE 13.

R. Na'hman b. R. 'Hisda lectured: A fowl burnt-offering must not be bought from the money of the treasury. Said Rabha: This is nonsense! Said R. Na'hman b. Itz'hak to him: Why nonsense? *I* said it to R. Na'hman b. 'Hisda, in the name of R. Shimi of Nahardea, and the reason is that for the remaining money of the treasury burnt-offerings for the congregation are bought, and there is no fowl-offering for the congregation. In like manner Samuel holds what was said in the name of R. Johanan concerning daily offerings; as R. Jehudah said in his name that all the offerings of the congregation are prepared for what they are intended by the application of the knife to them (and no knife is used to a fowl-offering). So also we have learned

in the following Boraitha: R. Simeon admits concerning a he-goat that was not offered on the festival, that he may be offered on the new-moon or day of atonement, on the feast of Tabernacles, and may as well remain for the next holidays, since originally he was intended as an offering to be brought on the exterior altar.

END OF TRACT SHEBUOTH.

TRACT EDUYOTH (TESTIMONIES).

INTRODUCTION.

There is no Gemara to this Tract. However, it forms a part of the section Jurisprudence, and is usually printed with the commentaries of both Maimanides and Rabad.

Although these Mishnaioth are almost each of them repeated in some of the six sections of the Talmud (thus a number of them already translated by us), yet we could not omit them because of the significance they attain in view of the fact that the contents of them all were testified before the Assembly of the sages. The first chapter, however, of this Tract, which was not testified, is significant for its showing (*a*) the cases wherein the sages establish the Halakha without adopting the views of either Shamai or Hillel though expressed by each of them personally; (*b*) wherein the school of Hillel after deliberations abandoned their view to adopt that of the school of Shamai; (*c*) the reasons for the rule that the opinion of an individual is mentioned though the Halakha prevails with the majority; (*d*) where the school of Shamai do not agree with Shamai, their master.

We have translated this Tract almost literally, referring the reader who may be confronted with some difficulties to places where detailed explanations are found, as to explain these here would necessitate a whole volume for itself.

TRACT EDUYOTH (TESTIMONIES).

CHAPTER I.

MISHNA *I.*: Shamai says: For all women suffices their perceiving the menses (to make unclean whatever one of them may happen to touch; but not before this perceiving). Hillel, however, says: The time is to be counted between two consecutive examinations regardless of the length of the interval and be it of many days (and all she touches at that time is unclean). The sages, however, say: The Halakha prevails with neither Shamai nor Hillel; but one day (night included) reduces the interval between the said examinations; on the other hand, the moment of examination reduces the allowance of the day (and night). (However, all agree) that for every woman who has a regular periodic menstruation the perceiving suffices. She who uses sheets to examine herself before and after intercourse, reduces thereby both the time of the previous examination and the above-said day of allowance.*

MISHNA *II.*: Shamai says: One must separate Chalah (first dough) from one Kab; Hillel says from no less than two, while the sages set the minimum at one and a half Kab, lowering it, however, to five-fourths of a Kab when the measures were increased. R. Jose says: Not exactly five-fourths, but a trifle above.

MISHNA *III.*: Hillel says: One Hin-ful of drawn water renders a legal bath,† when poured therein, unfit. (A Hin-ful is not the exact quantity, but is stated here as it is one's duty to use the teacher's language.) Shamai says: Nine Kab, while the sages, disagreeing with either view, uphold the two weavers that came from the gates-of-refuse in Jerusalem and testified in the name of Shemai and Abtalion that three Lugs of drawn

* This Mishna is the first in the I. Chapter of Tract Nidah, and will be translated in the proper place with the Gemara.

† In case same does not yet contain the legally prescribed 40 saah.

water render the aforesaid bath unfit, and decided that Halakha to prevail so.

MISHNA *IV.*: Why, then, are the theories of Shamai and Hillel stated at all, if without avail? To teach to posterity that one must not insist upon one's statements, since the distinguished masters of the world did not persist in their views.

MISHNA *V.*: And why is mention made of the opinion of a single person in connection with that of many, when the final decision is invariably with the majority? In order that when a court should happen to approve of some one's opinion it might base its decision thereon, for no court may annul the decision of another court, unless it be superior to latter both in erudition and number. If, however, it be superior only in one respect: in either erudition or number, it cannot annul; as it must be superior in both.

MISHNA *VI.*: Said R. Jehudah: If this be the case, why is mention made of the opinion of an individual in connection with that of the majority to no purpose? In order that if one were to base his argument on tradition he could be answered that his tradition is in accordance with the opinion of that and that individual.

MISHNA *VII.*: Beth Shamai says: A quarter Kab of the bones of the dead (defiles one in the tent) be it from two or three dead; Beth Hillel says: A quarter Kab from one corpse, from the quarter part of the entire structure, or of the number of bones. Shamai himself says: One bone suffices.

MISHNA *VIII.*: Vetch terumah may, according to Beth Shamai, be soaked and peeled in a state of cleanness, but in that of uncleanness the cattle may be fed on it. Beth Hillel, however, hold that in the former state it may be soaked only, while peeling and feeding may be done in the latter. Beth Shamai says: It must be very dry when given to the cattle; R. Aqiba holds that in a state of uncleanness all actions may be performed on it.

MISHNA *IX.*: If one desires a sela in exchange for copper coin of the second tithe, he must, according to Beth Shamai, exchange the whole coin for a sela, while the Beth Hillel maintain that he may take but one shekkel in silver and the other have in copper coin.* (R. Mair says): One must not redeem fruit and silver by other silver, while the sages allow it.

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* All this receives its explanation in Tract Second-Tithe, section Seeds.

MISHNA *X.*: When one exchanges a sela of second tithe in Jerusalem, he must, according to Beth Shamai exchange the entire sela for copper coin; Beth Hillel hold as above; the experts* of the sages say: For three dinar in silver and one dinar coin. R. Aqiba's opinion is: Three dinar in silver and of the fourth one a quarter in coin. R. Tarfon says: Four aspers in silver. Shamai himself says: Let him leave the sela in the store till he gradually consumes its worth in goods.

MISHNA *XI.*: The bride's chair, when stripped of its adornments is declared by the Beth Shamai as subject to defilement, but not so by Beth Hillel. Former holds that even the seat alone of that chair is unclean. Similar are the respective opinions of the Beth Shamai and the Beth Hillel with reference to a chair put into a trough, the former declaring in addition the chair unclean if even only made in a trough. (Will be explained in Tract Kelim.)

MISHNA *XII.*: Following are the cases wherein the Beth Hillel have altered their views in favor of those advanced by the Beth Shamai: The woman who upon coming from the sea-countries asserts that her husband died may, according to the Beth Shamai, remarry or enter a levirat marriage; while the Beth Hillel contended: We heard this as holding good only concerning a woman who comes from the harvest; whereupon the Beth Shamai retorted: It is immaterial whether she comes from the harvest, olive gathering or from a sea-country; and the expression "harvest" as used by the sages in this matter was one of fact; thereupon the Beth Hillel conceded. Furthermore, according to Beth Shamai such woman is allowed to marry and to obtain her marriage contract, which latter right the Beth Hillel denied her, whereupon the Beth Shamai argued: You allow a possible adultery, a rigorous transgression, and prohibit a money matter, a (lenient) misdemeanor? Whereto the B. Hillel rejoined: For we find that the heirs of the deceased cannot enter inheritance upon her statement alone. And Beth Shamai replied: But we are informed directly from her marriage contract, where the husband writes: If you get married to another one you should get what is here devised to you; thereupon the B. Hillel conceded to them.

MISHNA *XIII.*: He who is half slave and half free† works,

* *I.e.*: Ben Azai, Ben Zoma, 'Hanan the Egyptian, and 'Hanania.

† *I.e.*, he was a slave of two masters, one of whom freed him.

according to Beth Hillel, one day for his master and one for himself. Hereto objected the Beth Shamai: You amply provide for his master but not for him; he has no right to marry either a slave or a free woman, nor should he remain single, for the world has been created for propagation, as it reads [Isa. xlv. 18]: "Not for naught did he create it; to be inhabited did he form it." Accordingly, for the sake of a better organization of the world his master is compelled to wholly free him, and the slave writes him a note on the half of his value; and the Beth Hillel accepted this opinion.

MISHNA *XIV.*: An earthen vessel when covered protects (against tent-uncleanness) according to Beth Hillel all (it contains), while the Beth Shamai holds that it protects only food, beverages and earthen vessels. Asked Beth Hillel: Why? And they answered: Because it is unclean in the opinion of the Amharetz, and no clean vessel is protective; and B. Hillel's question as to why have you declared it protective of food and beverages, they meet thus: We declare these clean only for the Amharetz, but if you were to declare the vessel as such clean, it would be so in general; hereupon the B. Hillel agreed.

CHAPTER II.

MISHNA *I.*: R. 'Hanina the segan of the priests testified the following four statements—viz.: The priests have never hesitated to burn meat defiled in a secondary degree together with meat defiled in a primary degree, though latter augments the uncleanness of the former; R. Aqiba added: Nor have they ever hesitated to burn oil, that has become unusable through a defiled one though bathed during the day, in a lamp defiled through contact with one who touched a corpse, though the uncleanness of the oil is thereby augmented.

MISHNA *II.*: Furthermore, he said: During all my life I have not seen a hide (of a sacrificed animal found internally injured) brought out to the fireplace. Said R. Aqiba: We learn therefrom that when the first-born cattle on being stripped of its hide is found internally injured, the priests may use its hide. The sages, however, say: "We have not seen" is no evidence, so that the hide must be removed to the fireplace.

MISHNA *III.*: The same R. 'Hanina testified that there was an old man in a little village near Jerusalem, who was lending money to all the villagers, writing himself the notes and having others to sign them; when this case came before the sages, they declared it proper. From here is to infer that both woman and man may write she her divorce and he the receipt respectively, since the validity of a divorce is effected only by the undersigned thereon.

He finally testified that, when an (unclean) needle was found in the flesh (of a sacrifice), the knife and the hands are clean, but the flesh is unclean; but if found in the paunch everything is clean.

MISHNA *IV.*: R. Ismael propounded three things before the sages at Iabnah in the vineyard: (*a*) a cracked egg put upon a colewort of Terumah forms a combination except when put on like a hat; (*b*) an ear of corn left standing in the crop with its point toward the yet unreaped corn, belongs to the landowner provided it be capable of being cut off with the standing corn, otherwise it belongs to the poor (*as forgotten*); (*c*) a small garden

fenced with creeping vine may be sowed (with seeds) if it has enough room, so that the vine-dresser with his basket can stand on all its sides, but not otherwise.

Three things have been propounded in the presence of R. Ismael, and as he did not express himself either for or against, R. Jehoshua b. Mathia interpreted them: (*a*) One who inflicts upon one's self a sore on the Sabbath day is guilty if he did it in order to make a permanent orifice, but is free if his purpose was to remove the pus; (*b*) one is free for hunting a snake on Sabbath in order to escape its bites, but is liable if for medicinal purposes; (*c*) earthen dishes used in cities are clean when in the tent of a corpse, but become unclean when carried by him who is possessed of a running issue, in which latter case R. Eliezar b. Zadok declares them also clean since their work has not yet been completed.

MISHNA *VI.*: R. Ismael declared three things which R. Aqiba has not agreed in: Garlick, sour grapes, and unripe corn-ears ground (on Friday) before twilight may, according to R. Ismael, be finished after sunset, while R. Aqiba does not allow it.

MISHNA *VII.*: Of the following three statements cited before R. Aqiba the first two were in the name of R. Eliezar, and the third one in that of R. Jehoshua: (*a*) A woman may go out on Sabbath in her gold city-crown; (*b*) hunters after another's doves are unfit as witnesses; (*c*) when a weasel with a worm in its mouth runs over the breads of Terumah and it remains dubious as to whether or not the worm touched the breads they are clean.

MISHNA *VIII.*: R. Aquiba has made statements, of which only the first two found the approval of the sages: (*a*) A sandal of the lime-burners is subject to defilement by the steps of him who has a running issue; (*b*) the remnants of an (unclean) oven are unclean when four hand-widths high, which height was thought before to be only three; (*c*) a chair, from whose seat two consecutive boards have been removed is, according to R. Aqiba only, subject to defilement.

MISHNA *IX.*: He (R. Aqiba) was wont to say: The father conditions in his son beauty, force, wealth, wisdom, longevity, and the reward to be bestowed on (his) posterity; and herein lies the end of destiny, as it reads [Is. xli. 4]: "He predetermines from the beginning of fate of the generations to come," and though it reads [Gen. xvi. 13]: "They will enslave them

and torture them for 400 years," yet we read further [ibid. xvi.]: "The fourth generation will return again unto here."

MISHNA *X.*: Furthermore, he was saying: There are five things of a twelve months' duration—viz.: the punishment of the generation of the flood, that of Job, of the Egyptians, of Gog and Magog in time to come [Ezek. xxxv. 2], and of the wicked in the infernum, for it reads [Isa. xv. 6]: "It will take place (*chodesh bechodsho*) every month," *i.e.*, from the month he died next year the same month renewed. R. Johanan b. Nari says (regarding the last point): It lasts only from Passover till *Azereth*, for it reads [ibid.]: "From one festival to the other."

CHAPTER III.

MISHNA *I.*: All objects that defile within the tent are, according to R. Dohssa b. Horkinoss, clean when they were brought into the house after having been divided in smaller parts; but the sages declare them unclean. How so? If one touches or carries two pieces of a carcass each of the size of half an olive, or touches of a corpse the size of a half an olive (and his body covers such a size) and such a size shelters him, or he covers as much as two halves of an olive, or only of a half an olive but is roofed by such a size, R. Dohssa b. Horkinass declares him clean and the sages declare him unclean. But if he touches the size of half an olive while another thing covers both him and of a corpse the size of half an olive (or he covers such size and another thing covers him and such a size), he is clean (also according to the sages). R. Mair, however, said: Also herein the sages and R. Dohssa differ as above. (They declare) that all combine to render unclean except touching with carrying, and carrying with roofing. This is the rule: What bears one and the same name is index of uncleanness, two different names is one of cleanness. (All the Mishna is explained in third chapter of Tract Oholoth (Tents).

MISHNA *II.*: Food consisting of sundry parts does not, according to R. Dohssa b. Horkinass, combine (to the measure of an egg), while according to the sages it does so. R. Dohssa holds that it is allowed to exchange second tithe for uncoined money, while according to the sages it is not. Finally, he holds that it suffices to bathe one's hands to be allowed to touch the sin-cleansing water, while the sages say that (in this case) with the uncleanness of his hands the entire body is unclean.

MISHNA *III.*: The interior of a melon, as well as the peel strips of a colewort is as terumah allowed to laymen (non-priests), so R. Dohssa, while the sages do not allow it. He further holds that it is only then obligatory to separate the first-cut wool of five shorn sheep when each of them furnishes one and a half mana worth of wool, while in the opinion of the sages

even when the wool of the five sheep is however little. (Is further explained in Tract Chulin, Chapter XI.)

MISHNA *IV.*: According to R. Dohssa, all mats are getting unclean only when touched by a corpse, but according to the sages, also by (mere) pressure. He says further that all woven work remains clean except a girdle, but according to the sages all are subject to defilement, except, however, those of the wool-traders.

MISHNA *V.*: A sling whose handle is embroidered is subject to defilement. But if it is of leather R. Dohass declares it clean, and the sages, unclean. If its finger-hole has been severed from it, it is clean, but also is unclean if only its end is severed.

MISHNA *VI.*: The wife (of a priest) that was in captivity is, according to R. Dohssa, allowed to eat terumah, while the sages say: There is a difference between one captive and another. How so? If she says: I was in captivity, but am clean, she may eat, for the mouth that prohibits also allows, but if her captivity is attested by witnesses and she asserts thereupon to be clean, she is not allowed to eat. (Explained in Tract Kethuboth, Chapter II.)

MISHNA *VII.*: There are four doubtful cases where R. Jehoshua declares the thing unclean and the sages, clean—viz.: (*a*) while the unclean is standing the clean one is passing, or (*b*) *vice versa;* (*c*) when something unclean is in the private ground, while something clean in the public grounds, or (*d*) *vice versa*, in which cases it is doubtful whether or not one touched, roofed, or was moved by, the other. (Tract Taharoth, Chapter II.)

MISHNA *VIII.*: Three things are declared unclean by R. Zadok and clean by the sages—viz.: (*a*) The exchanger's nail; (*b*) the trunk of the bean-grinders, and (*c*) the screw of the stone sun-clock. (Kelim, Chapter XII.)

MISHNA *IX.*: Four things are held unclean by R. Gamaliel and clean by the sages: (*a*) The cover of a metallic basket used in households; (*b*) the handle of a (bathing) scraper; (*c*) the unfinished metallic vessels, and (*d*) a board broken in two (equal) parts; in the last-named case, however, if the parts be unequal, the sages concur with R. Gamaliel in that the bigger part is unclean and the smaller, clean. (Ibid., ibid., Mishna VI.)

MISHNA *X.*: In the decision of the following three R. Gamaliel is as rigorous as Beth Shamai: It is not allowed: (*a*) to keep warm on a holiday cooked food for Sabbath; (*b*) to put

together the parts of a chandelier on a hoilday, and (*c*) to bake (on a holiday) big loaves of bread, but only small ones. He said: During all the time they were baking in my father's house only thin loaves, and he was answered: We can make no conclusion from your father's house, who have always been rigorous to themselves, but lenient to all others, allowing them to bake not only big loaves but even big cakes on coal.

MISHNA *XI.*: In the following three things, however, his decisions are lenient: It is allowed (*a*) to sweep (on holidays) between the bedsteads; (*b*) to put upon coals the fumigation, and (*c*) to roast a prepared kid on the first Easter evening, all which the sages forbid.

MISHNA *XV.*: Three things R. Elazar b. Azaria allows and the sages forbid: (*a*) His cow was allowed to walk out (on Sabbath) with the strap between her horns; (*b*) he allows to curry the cattle on holidays, and (*c*) to grind pepper in hand-mills adapted thereto. R. Jehudah maintains that point sub (*b*) is not allowable, as one could while currying make a sore, but allows to do it with a wooden comb, while the sages forbid both. (The last two Mishnas are explained in Tract Beitzah.)

CHAPTER IV.

MISHNA *I.*: In the following cases the decisions of Beht Shamai are lenient, and those of Beth Hillel rigorous. An egg laid on a holiday is, according to Beth Shamai, allowed to eat on that day, but is not so according to Beth Hillel. Regarding the removal of leaven (before Passover) Beth Shamai hold it must be of the size of an olive and leavened bread of that of a date, while the Beth Hillel fix the size of each at that of an olive.

MISHNA *II.*: All agree in that a cattle born on a holiday is allowed, but a fowl out of the eggs is not. If one slaughter game or fowl on a holiday he is allowed by Beth Shamai to dig up loose ground (the spade already struck in) and cover the blood, while Beth Hillel do not allow to kill unless there be earth prepared, admitting, however, that after one has killed, he may use with the spade the loose ground, and that ashes from the hearth be regarded as prepared earth.

MISHNA *III.*: The Beth Shamai consider ownerless everything left to the poor, while according to Beth Hillel, only that is ownerless which is abandoned to the rich as well, instance Shmitah. If all the sheaves of a field contain each a Kab and one of them containing four Kab is left, the Beth Shamai do not regard it forgotten, and Beth Hillel do so. (Tract Peah, Chapter VI.)

MISHNA *IV.*: Likewise do not Beth Shamai regard forgotten a sheaf left near a wall, a stag, a bull, or implements; while Beth Hillel do.

MISHNA *V.*: The four-year-old vine is, according to Beth Shamai, not subject to either the additional fifth or destruction, while according to Beth Hillel it is. Furthermore, the former hold that it is subject to both *Peret* and *oillcloth* [Lev. xix. 10], and that the poor are to redeem it themselves; while the latter say it all goes to the winepress.

MISHNA *VI.*: A cask with preserved olives need not have a hole, so Beth Shamai, while Beth Hillel find it obligatory, admitting, however, that if there had been one, but was stopped

by the dregs, the cask is clean. If one, having besmeared his body with sweet oil, became unclean and then took a legal bath, Beth Shamai declare him clean even when the oil is dripping, but according to Beth Hillel he is not clean, unless there be left on him no more oil than would be necessary to besmear a small organ, which last condition the Beth Shamai require when the oil used before the bath was unclean, while Beth Hillel in this case require that there be only an inconsiderable moisture. Said R Jehudah in the name of Beth Hillel: That there be a moisture sufficient to moist some other thing. (All this will be explained in Tract Taharath.)

MISHNA *VII.*: According to Beth Shamai one dinar or its worth is consideration in the marrying of a wife; the Beth Hillel set it down at a Perutah or its worth, which is one-eighth of the Italic Saar. The former hold further that one may dismiss his wife on the basis of the old divorce bill, *i.e.*, a divorce after whose consummation he remained yet alone with his wife, while the Beth Hillel say he cannot. Similarly, if a wife who had been divorced, happened to pass a night in the same inn with her (former) husband, she needs no other bill of divorce according to Beth Shamai, but the Beth Hillel say she needs one if she was divorced after they had been wedded, but not after they had been only betrothed to each other, for in the latter case they were not yet intimate with each other.

MISHNA *VIII.*: Beth Shamai allow brothers to enter levirate marriage with their rival-wives (of prohibited kinship degrees), which the Beth Hillel forbid. If they have performed Chalitzah, Beth Shamai declares them unmarriageable to a priest and Beth Hillel allows them. The two schools change their views regarding the case when the wives become widows after they had been taken in levirate marriage. Notwithstanding that the one school prohibits what the other allows, the disciples of the two schools have never refrained from intermarriage with one another. Likewise as regards cleanness and uncleanness where the two hold opposite opinions, they have none the less never hesitated to loan one another objects declared clean by both schools.

MISHNA *IX.*: If of three brothers two are married to two sisters and the third one is single; if, now, one of the married brothers died and the unmarried promises the widow to marry her, whereupon the second of the brothers died, Beth Shamai say: The single brother is to keep his wife and the other one is

to go free as the wife's sister; while Beth Hillel hold that he must dismiss his wife with both divorce and Chalitzah, and his sister-in-law with Chalitzah; as the proverb goes: He is to be pitied for both his wife and his sister-in-law! (Tract Yebamoth, Chapter IV.)

MISHNA *X.*: If one abstain by vow from sexual intercourse with his wife, he is allowed by Beth Shamai to keep the vow for two weeks, by Beth Hillel for but one. A woman who bears a miscarriage on the eve of eighty-one days (after the birth of a daughter) Beth Shamai free from an offering, and Beth Hillel hold liable. Beth Shamai say a quadrangular sheet needs no tzitzis, Beth Hillel hold it needs. A basket with figs prepared for Sabbath is, according to Beth Shamai free from the tithe, according to Beth Hillel it is not.

MISHNA *XI.*: If one vowed to remain a Nazarite for some time, and after the expiration of the term comes to the land (of Israel), Beth Shamai hold he must continue in the state of Nazarite for another thirty days, while Beth Hillel make him begin the whole term anew. If two parties of witnesses testify, the one that so and so has vowed to be a Nazarite twice, the other, five times, Beth Shamai declare this testimony invalid as conflicting, and he must not be a Nazarite at all, while Beth Hillel say: Five contains two, hence he must be a Nazarite twice. (Nazir, Chapter III.)

MISHNA *XII.*: The man who finds himself underneath a crevisse does not, according to Beth Shamai, transfer the uncleanness from one side to the other, while Beth Hillel regard the man as hollow, so that his upper side does transfer the uncleanness (as roofing). (Oheloth, Chapter XI.)

CHAPTER V.

MISHNA *I.*: R. Jehudah attested six cases where the decisions of the Beth Shamai are lenient, and those of Beth Hillel rigorous. The blood of a carcass is, according to the former, clean, but unclean, according to Beth Hillel. The egg of a fowl carcass, if it looks like the ordinary egg sold in market, is allowed by Beth Shamai, but not otherwise, while the Beth Hillel prohibit it in all cases. However, both prohibit the egg of an internally injured, for it was formed in a prohibited stage. The menses of a heathen woman as well as the clean blood of a leprous woman in confinement, Beth Shamai declare clean and Beth Hillel consider it to be like her spittle or urine. The fruit of the Sabbathic year one may enjoy with or without reward, according to Beth Shamai, the Beth Hillel hold that one may eat it and reward somehow the owner. A leather bag is subject to defilement, according to Beth Shamai, if it is bound and fastened, and the Beth Hillel hold so even when it is not bound. (Shebieth, IV.)

MISHNA *II.*: R. Jose quotes also similar decisions of six cases. Beth Shamai allow to serve on the table, but not to eat, poultry together with cheese, while Beth Hillel forbid the one as well as the other. Likewise allow the former to separate Terumah from olives for their oil and for the wine from grapes, and the latter prohibit it. According to Beth Shamai he who sows seeds within four ells in the vineyard has thereby sanctified one row, while according to Beth Hillel, two rows (*i.e.*, the rows in question must not be sown). Flour put into boiling water is, Beth Shamai say, free from Chalah, and the Beth Hillel say it is not. The Beth Shamai allow to use rain-water (running down hill) as a legal bath, the Beth Hillel do not. Finally, Beth Shamai allow a proselyte, who underwent circumcision on the eve of Passover, to immerse himself and then partake in the Passover-offering, while Beth Hillel declare that he who parts with his prepuce is like one returning from the grave.

MISHNA *III.*: R. Ismael cites to the same effect the decisions of the following three cases: The book Ecclesiastæ does

not, according to Beth Shamai, render unclean the hands, while it does so according to Beth Hillel. Sin-cleansing water that has already performed its destination is declared clean by former and unclean by latter. The same divergence of opinion the two schools show with regard to the cleanness and uncleanness of black cumin and its tithe. (Negaim, Mishna III., Chapter V.)

MISHNA *IV.*: R. Elazar quotes two cases to the same effect. The blood of a woman lying-in, who has not bathed (as prescribed) is considered by Beth Shamai as her spittle and urine, while Beth Hillel declare it defiling always, moist or dry. The former agree, however, with the latter view when the woman in question bore in a state of running issue, then the issue defiles immaterial whether dry or moist. (Tract Nidah II., Mishna VI.)

MISHNA *V.*: If of four brothers two who are married to two sisters die, the latter perform Chalitzah but cannot enter the levirate marriage; and if such marriage has been hastily concluded, divorce must follow. R. Eliezar quotes the Beth Shamai as declaring this marriage to remain, and Beth Hillel as requiring divorce.

MISHNA *VI.*: Aqavia b. Mehallalel testified four things, which the sages persuaded him to retract, promising him therefor the chair of presiding justice in Israel, to this he responded: I shall prefer to hear the name fool all my life to becoming a wicked even for one hour before the Omnipresent; but let nobody say "He retracted for the sake of an office!" Here are his rules: He declared unclean the white hair (left from a previous case of leprosy) as well as the yellow blood (of a woman), both which the sages declare clean; he allowed to make use of the faded hair of a blemished first-born cattle slaughtered immediately after the hair has been put into a (wall) niches, while the sages forbid it; finally, he prohibited to give the jealousy-water to a female proselyte or to a freed maid-slave, which the sages allow.

The following episode was thereupon presented to him: A certain Karkmith, a freed maid-slave in Jerusalem, was made to drink the aforesaid water by Shmaia and Ahtalion, to which he replied: They did it only in a "make-believe" way. (They, being themselves proselytes, did it.) And they placed him under ban, and when he died the court stoned his coffin. R. Jehudah remonstrated: That Aqavia b. Mehallalel, who among all Israel on whom the doors of the temple court-yard closed, was unequalled in both erudition and piety, should have been placed

under ban? Impossible! It was Eliezar b. 'Hanoch that was excommunicated for his trifling with the rule concerning hand-cleaning; and when he died the court sent to put a stone on his coffin; whence it may be inferred that the coffin of him who dies while under ban is to be stoned.

MISHNA *VII.*: While on his death-bed he (Aqavia b. Mehallalel) thus spoke to his son: Reject the four rules I have been teaching; I adhered to them because I had received them from a majority, and the others likewise had them from a similar source; we both, therefore, remained true to our traditions; but you have learned them of an individual and then of a majority, now it is more advisable to abandon the opinion of the individual and to follow that of the majority. Then the son's request to commend him to his friends he refused, saying: It is not because I find fault with you, but let your own conduct be your recommendation. (Explained at length in Pessachim V., Mishna IV.)

CHAPTER VI.

MISHNA *I.*: R. Jehudah b. Baba attested five cases. Girls under age are made to express their refusal; a woman is allowed to remarry on the testimony of one witness; in Jerusalem a cock that had killed a person was stoned; wine only forty days old was brought upon the altar as a drink-offering; and finally, the daily morning sacrifice was (once) offered at the fourth hour (in the morning).

MISHNA *II.*: R. Jehoshua and R. Nehunia b. Elinathan of the Babylonian village attested that an organ (even if not an olive big) of the dead is defiling, as against R. Eliezar, who asserts that the sages taught thus only in reference to an organ of a live body; and the others rejoined: Is it not an inference *a fortiori*—viz.: since the organ of a live body which latter is clean is, if severed, unclean, so much the more so that of a dead body, which latter is of itself unclean? His answer was: And yet the sages taught so only in respect of an organ of a live body. According to others the answer was this: The uncleanness of the living is more extensive than that of the dead, for the living (who has a running issue) renders all that he lies or sits on capable of defiling man as well as garments, and all that rests above him, by his exhalation capable of defiling food and beverage, all which the dead does not.

MISHNA *III.*: Flesh of the size of an olive severed from an organ dismembered from a living (person) is unclean according to R. Eliezar, but clean according to R. Jehoshua and Nehunia. On the other hand, a bone the size of a barley-corn severed from said organ R. Nehunia declares unclean, and R. Jehoshua with R. Eliezar, clean. R. Eliezar was then asked: What prompts you to vindicate the former decision? He replied: We find that a severed live organ is regarded as a whole corpse; hence, as from a dead severed flesh of the size of an olive is unclean, severed flesh of such size from the living must be unclean, too! I, therefore, base my decision on this analogy. Whereupon it was rejoined: While you justly declare unclean flesh of an olive size severed from a corpse, for a barley-corn-sized bone of a corpse

is likewise unclean, you commit yourself to a discrepancy in your decision regarding the flesh and the bone of a severed *organ* of a living body respectively, whereby your analogy is annihilated! Similarly was R. Nehunia asked to base his view, which he did by a like analogy, thus: We find that a severed organ of the living is like an entire corpse and a barley-corn-sized bone of the latter is unclean, whence my decision. Whereupon he was answered: If you justly declare unclean so small a bone severed from a corpse by reason of holding unclean flesh the size of an olive severed from a corpse, you cannot on this basis declare unclean a bone the size of a barley-corn severed from the dismembered organ of a living body, since you hold clean the flesh even of an olive-size severed therefrom!

R. Eliezar was then asked: Why have you divided your views? Declare either both unclean or both clean? And he answered: The uncleanness of the flesh is more extensive than that of the bones, because the flesh of carcasses and reptiles is defiling while bones of these are not. Another explanation according to others: An organ that has yet enough of its flesh on causes uncleanness through touching, carrying or sheltering it, and remains yet unclean even if it misses some of its flesh, while if some of its bone is wanting it is clean.

R. Nehunia was asked: Why have you divided your views? Declare either both unclean or both clean? And he answered: The uncleanness of bones is more extensive than that of flesh, for flesh severed from the living body is clean, while the organ, if severed from it in its natural state, is unclean. Another explanation: Flesh the size of an olive defiles by being touched, carried or sheltered, in like manner do bones defile in their majority; if some of the flesh misses it is clean none the less, if some of the majority of the bones lacks it is still unclean by touch and carriage, though not by shelter. Or thus: All the flesh of a corpse is clean when it does not all in all measure the size of an olive, while the greater part of its body or of its bones are unclean even when they do not make up a quarter of a Kab.

R. Jehoshua answered the question as to why he decides in both cases "clean," thus: The analogy between the dead and the living does not hold good, for to the former apply the requisite of majority, quarter-Kab, and spoonful of decomposed stuff, while to the living all this does not apply.

CHAPTER VII.

MISHNA *I.*: R. Jehoshua and R. Zadok attested that the priest has no claim to the assigned redemption of a first-born donkey that died, as against R. Eliezar, who said: The owner is obliged to indemnify it, as the five sela redemption of the first-born son. The sages, however, maintain that there is here no more obligation of indemnifying than in the case of redemption for the second tithe. (Tract Bechoroth I., Mishna VI.)

MISHNA *II.*: R. Zadok attested that the brine of the prohibited locusts is itself clean. For, the preceding Mishna reads: If unclean locusts have been pressed together with clean ones, they do not render the brine forbidden.

MISHNA *III.*: The same attested further that if flowing water exceeds in quantity the rain-water with which it is mingled, it is proper. Such a case occurred in the capital of Plia and the sages declared it proper.

MISHNA *IV.*: He attested, finally, that flowing water remains proper as such when made to rush through the green peel of a walnut. A case to this effect happened at Ohlia and, when brought before the court in the Hall of hewed stones in the temple, was found proper.

MISHNA *V.*: R. Jehoshua and R. Jakin from Hadar attested that an earthen pitcher with sin-cleansing ashes placed upon a reptile is unclean, while R. Eliezar declares it clean. R. Papies attests that he who, having vowed to be a Nazarite twice, had his hair cut the first time on the thirtieth day, may have his hair cut the second time on the sixtieth day; and if he cut his hair on the fifty-ninth day, he kept sufficiently his vow, since the thirtieth day is counted both ways. (Nazir, Chapter III.)

MISHNA *VI.*: R. Jehoshua and R. Papies attested that the offspring of a peace-offering may be offered as a peace-offering; now, as the sages hold so against R. Eliezar who maintains the opposite, said R. Papies: I attest that we ourselves had a cow of a peace-offering which we ate on Passover, and whose offspring we consumed the next Tabernacle likewise as a peace-offering. (Themura, Chapter III.)

MISHNA *VII.*: The same two attested that the flat boards of the bakers are unclean, as against R. Eliezar, who declared them clean; furthermore that a baking oven cut in parts between which mortar has been put, is subject to defilement, as against R. Eliezar, who finds it clean; that the court of justice has time to declare the year to be a leap-year during the entire month Ador, for formerly the Purim feast was thought to be the time limit for this declaration; finally, that the year may be declared a leap-year on condition. So it once happened that when R. Gamaliel, having gone to ask leave of the Hegemon of Syria, tarried on his way, the year was declared a leap-year on the condition that R. Gamaliel consent to it on his return, which he did upon returning and the year remained a leap-year. (Kelim, Chapter XV.)

MISHNA *VIII.*: Mena'hem b. Signai attested that the enameled brim of the (metallic) kettle used by the olive-boilers is subject to defilement, but that of the painters is clean, for, formerly the converse was held.

MISHNA *IX.*: R. Nehunia b. Gudgada attested that a deaf-mute girl married off (while under age) by her father may receive a divorce; that a minor (orphaned) Israel-girl married to a priest may eat Terumah, and that in case she dies her husband is her heir; furthermore, that the owner of a beam robbed and immured in a palace can claim only its value; finally, that a robbed sin-offering not known to the majority is regarded as atoning for its owner when offered on the altar (in order not to make the altar unclean).

CHAPTER VIII.

MISHNA *I.*: R. Jehoshua b. Bathyra attested that the blood of carcasses is clean. R. Simeon b. Bathyra attested that the ashes of the sin-cleansing red cow, if touched even in part by an unclean one, become all unclean; to which R. Aqiba added that he who has bathed for cleansing himself (and hence is not yet wholly clean) renders improper the whole of the holy flour, the frankincense, the incense and the coal on touching them only in part.

MISHNA *II.*: R. Jehudah b. Baba and R. Jehudah the priest attested that an (orphaned) Israel-daughter married under age to a priest is entitled to eat terumah soon after she was led under the canopy, though before cohabitation. R. Jose the priest and R. Zecharia the son of a butcher related the following: It happened that a small girl had been kidnapped by the heathens of Ashkalon; her kinfolks wanted to reject her from the family notwithstanding the assurance of the witnesses that she was not hiding with anybody nor dishonored, and the sages interfered, saying: If you believe her witnesses that she was kidnapped, there is no reason for you not to believe that she was not hiding with anybody nor dishonored; on the other hand, if you distrust the latter part, don't believe the former, either.

MISHNA *III.*: R. Jehoshua and R. Jehudah b. Bathyra attested that the widow of a priest of a doubtful pedigree may yet marry a priest, that such a doubtful family may enquire after the purity or impurity of its members, in order to separate itself from, or to approach them. Thereupon remarked R. Simeon b. Gamaliel: We accept your attestation, but what shall we do now that R. Johanan b. Zakkai has decreed not to call any jury on this point? The priests will surely follow you when a case of separation, but not when such of approaching, is concerned!

MISHNA *IV.*: R. Jose b. Joezer, the man of Zereda, attested that the locust *Ail Kamza* is allowed, that all liquids in the slaughter-house of the temple are not subject to defilement,

and finally that only he is unclean who has surely touched a corpse. He received on this account the name, Jose the allower.

MISHNA *V.*: R. Aqiba attested in the name of Nehemia from Beth D'lee, that the testimony of one witness suffices to allow a woman to remarry. R. Jehoshua attested that regarding bones found in the wood-barn (of the women's courtyard in the temple) which are yet unclean, the sages say: Pick them out singly, bone by bone, and all remains clean.

MISHNA *VI.*: Said R. Eliezar: I heard that when the central hall of the temple was being built, curtains were put up before both the hall and the courtyards, with the difference, however, that in the former the wall was built outside, while in the latter inside, of the curtains. R. Jehoshua said: I heard that it is allowed to offer sacrifices also when there is no temple, that the all-holiest offerings may be eaten also when there is no curtain; that leniently-holy offerings as well as second tithe may be eaten even if there be no city walls (around Jerusalem), for the first consecration has rendered her (the city) holy for her times as well as for all time to come.

MISHNA *V.*: R. Jehoshua said: I have it by tradition from R. Johanan b. Zakkai, who heard it in direct line from his teacher, to be a Halakha from Sinai to Moses that Elijah is not coming in the future to declare certain families clean or unclean, to separate or to reconcile them, but to remove those who were reconciled by force, and to bring together those who were segregated by force. A family of the name Bethz'repha was across the Jordan, excluded by a certain Ben Zion with the use of force; another family (of impure blood) was in the same manner accepted by the same Ben Zion. It is to declare cases of this kind clean or unclean, to remove or to accept that Elijah is coming. R. Jehudah says: Only to accept, but not to remove. R. Simeon says: His mission is only to settle certain disputes. The sages, however, say: His advent will have for its purpose not the removing or accepting of the mentioned cases but the establishing of peace in the world, for it is written [Malachi, iii. 23, 24]: "Behold, I send unto you the prophet Elijah, . . . and he shall turn back the heart of the fathers to the children, and the heart of the children to their fathers."

END OF TRACT EDUYOTH AND OF VOLUME XVII.